

PUBLIC REVIEW DRAFT

01/24/03

CHAPTER 2

BOROUGH INCORPORATION STANDARDS

Table of Contents

Section A. Introduction.....	1
Section B. Constitutional Standards for Borough Incorporation.	1
Part 1. Background.....	1
Part 2. Article X, Section 3. Boroughs.	2
Part 3. Article X, Section 1. Purpose and Construction.	5
Part 4. Article X, Section 2. Local Government Powers.	6
Part 5. Article X, Section 12. Boundaries.	13
Part 6. Constitutional Provisions that Buttress the Fundamental Nature of Boroughs (Article X, Sections 5, 6, 7, and 13).....	14
Section C. Statutory Standards for Borough Incorporation.	16
Part 1. Background.....	16
Part 2. AS 29.05.100. Decision.	17
Part 3. AS 29.05.031. Statutory Borough Standards.	17
Section D. Alaska Administrative Code Standards for Borough Incorporation...	19
Part 1. Background.....	20
Part 2. 3 AAC 110.045. Community of Interests.....	23
Part 3. 3 AAC 110.050. Population.....	27
Part 4. 3 AAC 110.055. Resources.	28
Part 5. 3 AAC 110.060. Boundaries.	30
Part 6. 3 AAC 110.065. Best Interests of State.	55
Part 7. 3 AAC 110.900-910. Transition & Non-Discrimination.	56

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CHAPTER 2

BOROUGH INCORPORATION STANDARDS

Section A. Introduction.

Section B. Constitutional Standards for Borough Incorporation.

Section C. Statutory Standards for Borough Incorporation.

Section D. Alaska Administrative Code Standards for Borough Incorporation.

Section A. Introduction.

The Constitution of the State of Alaska, Alaska Statutes, and Alaska Administrative Code each contain standards or criteria for borough incorporation. Those standards relate to the following four broad categories:

- economic capacity;
- population size and stability;
- regional commonalties (social, cultural, economic, geographic, transportation, and communication ties); and
- broad public interest.

The standards are formally identified and discussed in this part of the report. The review begins with the constitutional standards, and progresses to the standards established in the Alaska Statutes and Alaska Administrative Code.

Section B. Constitutional Standards for Borough Incorporation.

Part 1. Background.

Part 2. Article X, Section 3. Boroughs.

Part 3. Article X, Section 1. Purpose and Construction.

Part 4. Article X, Section 2. Local Government Powers.

Part 5. Article X, Section 12. Boundaries.

Part 6. Constitutional Provisions that Buttress the Fundamental Nature of Boroughs (Article X, Sections 5, 6, 7, and 13).

Part 1. Background.

Article X of Alaska's Constitution provides the framework for local government in Alaska. Eight of the fourteen sections in Article X relate (to varying degrees) to

the nature of boroughs and their establishment. Those are Article X, Sections 1, 2, 3, 5, 6, 7, 12, and 13.¹

Article X, Section 3 deals most specifically with borough standards. However, three other sections of Article X – Sections 1, 2, and 12 – also provide fundamental guidance concerning the character of boroughs and their creation. The focus of the other four sections – Sections 5, 6, 7, and 13 – lies principally with other aspects of Alaska local government. However, those four sections buttress the fundamental nature of boroughs set out in Sections 1, 2, 3 and 12.

The ensuing discussion of the constitutional standards begins with the most basic (Section 3) followed by Sections 1, 2, 12, and ends with the four secondary provisions.

Part 2. Article X, Section 3. Boroughs.

Article X, Section 3 of Alaska’s constitution has four principal elements. It provides that:

1. all of Alaska must be divided into boroughs (those boroughs may be organized and/or unorganized);
2. each of those boroughs must be established in a manner and according to standards enacted by the Alaska Legislature;²
3. the standards established by the Legislature must include population, geography, economy, transportation, and other factors;
4. each borough must have common interests.

The Committee on Local Government at the Alaska Constitutional Convention envisioned boroughs as units of government that would cover large areas. According to Vic Fischer:³

¹ Provisions in other articles of Alaska’s constitution may also be relevant to the matter of establishment of boroughs. In particular, Article I, Section 1 may be viewed as a constitutional policy promoting equal responsibility on the part of all Alaskans to share in the opportunities and obligations associated with local government. It provides that “... that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that *all persons have corresponding obligations to the people and to the State.*” (emphasis added). Only the constitutional provisions set out in Article X will be addressed here.

² Article X, Section 3 states, in part, “They [boroughs] shall be established in a manner and according to standards provided **by law**.” (emphasis added). Article XII, Section 11 states that “As used in this constitution, the terms “by law” and “by the legislature” or variations of these terms, are used interchangeably when related to law-making powers.”

³ Mr. Fischer is recognized by the Alaska Supreme Court as “an authority on Alaska government.” *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1244 (Alaska 1995). The Court has relied on his work in the *Keane* case (1242, 1243) and in the *Mobil Oil* case

As the committee was evolving [borough] principles, its members agreed that some type of unit larger than the city and smaller than the state was required to provide both for a measure of local self-government and for performance of state functions on a regionalized basis.

. . . the initial principles set forth by the committee for consideration in the formation of the new areawide government units included these guidelines: . . .

- Units should cover large geographic areas with common economic, social, and political interests. . . .

Victor Fischer, *Alaska's Constitutional Convention*, p. 118 – 119, (1975).

The regional characteristic of boroughs is reflected in Article X, Section 3 of the Constitution which provides as follows.

SECTION 3. BOROUGHES. The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

The fourth sentence of Article X, Section 3, which provides that “[e]ach borough shall embrace an area and population with common interests to the maximum degree possible”, is particularly significant regarding the fundamental

(98). Mr. Fischer is well known to most members of the Commission. He has addressed the majority of the current Commission in the past on a number of occasions concerning matters relating to local government in Alaska. Most recently, he addressed all current members of the Commission on August 10, 2002. Mr. Fischer received a bachelor's degree from the University of Wisconsin in 1948 and a Master's Degree in Community Planning from the Massachusetts Institute of Technology in 1950. He also received the Littauer Fellowship in public administration from Harvard University (1961-1962). Mr. Fischer has held several planning related positions in Alaska. He was a delegate to the Alaska Constitution Convention in 1955-1956. During the convention he was a member of the Committee on Local Government and served as its Secretary. Mr. Fischer has written and co-authored a number of books and publications concerning state and local government in Alaska. These include *The State and Local Governmental System* (1970), *Borough Government in Alaska* (1971), and *Alaska's Constitutional Convention* (1975). Mr. Fischer served in Alaska's Territorial House of Representatives (1957-1959) and the Alaska State Senate (1981-1986). He was a member of the faculty of the University of Alaska Fairbanks and of the University of Alaska Anchorage. At the University, he was primarily associated with the Institute for Social and Economic Research, where he was director for ten years. His current work includes studying Alaska Native and regional governance issues.

1 characteristic of boroughs. That sentence, by itself, does not indicate the
2 territorial or socioeconomic scale at which the commonality of interests is to be
3 evaluated. However, the minutes of the Alaska Constitutional Convention
4 provide compelling evidence as to the framers' intent regarding the character and
5 scope of boroughs.

6
7 In the following exchange, delegate John Rosswog, Chairman of the Committee
8 on Local Government, responded to a query from delegate John Coghill on
9 January 19, 1956 about the Committee's intent with respect to the language that
10 each borough shall embrace an area and population with common interests to
11 the maximum degree possible.

12
13 COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on line
14 6 of page 2, "Each borough shall embrace, to the maximum extent possible, an
15 area and population with common interests." My question here is directed to you
16 to find out what the Committee's thinking was as to boundary areas of local
17 government. Could you give us any light on that as to the extent? I know that you
18 have delegated the powers to a commission, but you have said that each
19 borough shall embrace the maximum extent possible. I am thinking now of an
20 area that has maybe five or six economic factors in it -- would they come under
21 one borough?

22
23 ROSSWOG: We had thought that the boundaries should be flexible, of course,
24 and should be set up so that we would not want too small a unit, because that is
25 a problem that has been one of the great problems in the states, the very small
26 units, and they get beyond, or they must be combined or extended.

27
28 *Proceedings of the Alaska Constitutional Convention*, Alaska State Legislature,
29 Legislative Council p. 2620 – 2621 (1963).

30
31 A nearly identical question arose on the floor of the Convention later that same
32 day. Delegate Barrie White inquired about the Committee's intent with respect to
33 the term "maximum extent possible." Committee member James Doogan and
34 Committee Chairman John Rosswog responded:

35
36 WHITE: Mr. President, on page 2, Section 3, I would like to ask the Committee,
37 on line 4, if the words "to the maximum extent possible" could be construed to
38 mean the largest possible area?

39
40 PRESIDENT EGAN: Mr. Doogan.

41
42 DOOGAN: I think that is the intent. It was pointed out here that these boroughs
43 would embrace the economic and other factors as much as would be compatible
44 with the borough, and it was the intent of the Committee that these boroughs
45 would be as large as could possibly be made and embrace all of these things.

46
47 WHITE: Is it the thinking of the Committee that the largest possible area,
48 combining area and population, with common interest, would be the most
49 desirable type of borough?

50
51 PRESIDENT EGAN: Mr. Rosswog.

ROSSWOG: Could I answer on that? I think that was the idea or the thinking of the Committee that they would have to be fairly large but the wording here would mean that we should take into consideration the area and population and common interest to the maximum extent possible because you could not say definitely that you were taking it all in, but as much as you possibly could.

Id. p. 2638.

The following day, January 20, 1956, delegate Katherine Nordale raised the virtually identical question. Vic Fischer, Local Government Committee Secretary responded.

NORDALE: Mr. President, I think this was brought up yesterday, but I have sort of forgotten what was said. It is just a question. On line 4, page 2 of Section 3, there was some discussion of the wording, "Each borough shall embrace to the maximum extent possible an area and population with common interests." Does that mean to the greatest degree it shall be a group of people with common interests? Nothing to do with the area -- I mean the square mile?

V. FISHER: What it means is that wherever possible, "Each borough shall embrace an area and population with common interests."

Id. p. 2711.

Part 3. Article X, Section 1. Purpose and Construction.

Article X, Section 1 sets out the purpose of the local government article of the constitution. It also provides the framework for construction of local government powers.

In terms of borough standards and the creation of boroughs, Article X, Section 1 establishes two fundamental provisions. First, it encourages the creation of borough governments in areas of Alaska that meet borough standards.⁴ Secondly, it establishes a constitutional policy favoring a minimum number of borough governments.⁵

Vic Fischer indicates that one of the basic principles concerning borough formation set forth by the Local Government Committee was that, "units should be large enough to prevent too many subdivisions in Alaska . . ." Victor Fischer, *supra*, p. 119. When harmonized with other standards for borough government, the minimum governments principle of Section 1 further promotes the concept of large boroughs.

Section 1 of Article X states as follows:

⁴ Mobil Oil Corporation v. Local Boundary Commission, 518 P.2d 92 (Alaska 1974).

⁵ In relevant part, Article X, Section 1 states, "The purpose of this article is to provide for ... a minimum of local government units."

SECTION 1. PURPOSE AND CONSTRUCTION. The purpose of this article is to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax levying jurisdictions. A liberal construction shall be given to the powers of local government units.

The constitutional policies in Article X, Section 1 concerning “minimum of local government units” and prevention of “duplication of tax levying jurisdictions” addressed a matter of great concern at the time Alaska’s constitution was drafted. Specifically, those clauses blocked the fragmentation of governing authority among many overlapping, often single-purpose, governmental agencies, with a corresponding loss of capacity to perform, and loss of clear political and fiscal accountability. Taken together, the two principles do not limit the creation of boroughs to a specific number. Instead, it limits their creation by the principle that only the minimum number of boroughs necessary to provide effective and efficient local self-government should be created.

Part 4. Article X, Section 2. Local Government Powers.

Article X, Section 2 of the constitution concerns the vesting of powers in local governments. In terms of the standards for boroughs, it relevant to stress that Article X, Section 2 recognizes only two types of local governments – cities and boroughs. It provides as follows:

SECTION 2. LOCAL GOVERNMENT POWERS. All local government powers shall be vested in boroughs and cities. The State may delegate taxing powers to organized boroughs and cities only.

Cities and boroughs are identical in certain fundamental respects. For example, both are municipal corporations and both are political subdivisions of the State of Alaska. Moreover, the powers and duties of boroughs are comparable to those of home rule and first class cities in the unorganized borough.

However, major distinctions exist between boroughs and cities with respect to form. Boroughs are intended to serve large, natural regions. In sharp contrast, city governments are intended to serve only communities. Thus, home rule and first class cities may exercise borough-like powers, but only within city jurisdictions. Conversely, it could be said that boroughs exercise home rule or first class city-like powers, but over regional jurisdictions.

Cities are subject to the “limitation of community” doctrine while boroughs are not. The Alaska Supreme Court held as follows concerning that distinction:⁶

⁶ In the *Mobil Oil* case (involving incorporation of the North Slope Borough) the Court addressed the limitation of communities doctrine by making a distinction between boroughs and what it termed “municipalities” (e.g., “boroughs are not restricted to the form and function

[Appellants] offer a series of cases striking down municipal annexations and incorporations where the lands taken have been found to receive no benefit. We find this authority unpersuasive when applied to borough incorporation. In most of these cases, the courts inferred from statutes or state constitutions what has been called a ‘limitation of community’ which requires that the area taken into a municipality be urban or semi-urban in character.

There must exist a village, a community of people, a settlement or a town occupying an area small enough that those living therein may be said to have such social contacts as to create a community of public interest and duty. . . .

The limitation has been found implicit in words like ‘city’ or ‘town’ in statutes and constitutions or inferred from a general public policy of encouraging mining or agriculture. In other cases, the limitation has been expressed as a finding that the land taken is not susceptible to urban municipal uses. The result in these cases was determined not by a test of due process but by restrictions in pertinent statutes and constitutions on the reach of municipal annexations and incorporations.

Aside from the standards for incorporation in AS 07.10.030, there are no limitations in Alaska law on the organization of borough governments. Our constitution encourages their creation. Alaska const. art. X, § 1. And boroughs are not restricted to the form and function of municipalities. They are meant to provide local government for regions as well as localities and encompass lands with no present municipal use.

Mobil Oil Corp. v. Local Boundary Commission, 518 P.2d 92, 100 (Alaska 1974) (footnotes omitted).

of municipalities”). In the view of the Commission, the Court was clearly referring in the *Mobil Oil* case to “cities” (or derivatives thereof such as “city”, or “city government”) when it used the term “municipalities”, (or derivatives thereof such as “municipality”, or “municipal”). It is significant in that regard that when the North Slope Borough incorporation petition was filed, statutory standards and procedures for borough incorporation as well as other laws concerning boroughs were codified in “Alaska Statutes – Title 7 – Boroughs.” In contrast, statutes relating to cities were codified in “Alaska Statutes – Title 29 – Municipal Corporations.” The Court made reference to borough standards and other provisions in AS 07 seventeen times in the *Mobil Oil* case. In 1972, Titles 7 and 29 of the Alaska Statutes were repealed and new laws concerning both cities and boroughs were enacted as “Alaska Statutes – Title 29 – Municipal Government”. Today, AS 29 refers to both cities and boroughs as municipalities. The distinction in the terms used by the Court in *Mobil Oil* to describe the two types of governments (i.e., “boroughs” and “municipalities”) was purely nominal. However, the distinction made by the Court as to the form of the two types of governments (boroughs and cities) was significant.

1
2 The limitation of communities doctrine is implicit in the Alaska Statutes
3 concerning incorporation of cities.⁷ Moreover, that doctrine is explicit in the
4 Alaska Administrative Code governing city incorporation and city annexation. See
5 3 AAC 110.040(b)-(c) and 3 AAC 110.130(c)-(d).
6

7 Both cities and boroughs embrace territory with common social, cultural, and
8 economic interests. However, they do so at distinctly different scales. As
9 implicitly and explicitly reflected in Alaska's constitution, statutes, and
10 administrative regulations, each city government must embrace a community.
11 The term "community" in that context is a discrete locale and population with
12 significant common interests concerning social, cultural, economic, and other
13 characteristics.
14

15 As reflected in the preceding discussion, each borough must maximize the area
16 and population within its boundaries, but with the proviso that the maximum area
17 and population also embrace common interests. The requirement for maximum
18 area and population necessarily presumes an acceptable level of common
19 interests less than that found at the community level.
20

21 The following discussion on the floor of the Constitutional Convention on January
22 19, 1956 between delegate James Hurley, Local Government Committee
23 Chairman John Rosswog, Local Government Committee member Eldor Lee and
24 delegate John Hellenthal further reflects the conceptual nature of a borough. It
25 demonstrates that the Local Government Committee had no precise upper or
26 lower limits in mind regarding the geographic size of boroughs. However, the
27 dialogue also provides additional evidence that the delegates foresaw, in general
28 terms, relatively large boroughs. Perhaps most importantly, however, the
29 exchange provides insights with respect to the framers' vision concerning the
30 requisite degree of common interests within boroughs.
31

32 HURLEY: Mr. President, going back to Section 4, the matter has been mentioned
33 many times about the possible thinking as to the size of the boroughs. I took

⁷ Note the use of the term "community" in AS 29.05.011(a)(1), (3), (4) and (b). In that context, the term "community" is defined by 3 AAC 110.990(5) to mean a social unit of 25 or more permanent residents as determined by 3 AAC 110.920. A community exists where individuals reside permanently in a close geographical proximity that allows frequent personal contacts and comprise a population density that is characteristic of neighborhood living. Factors such as school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwelling units, and the number of commercial establishments and other service centers are evidence of a community. Further, the law presumes that a population does not constitute a community if public access to or the right to reside at the settlement is restricted, if the population is adjacent to a community and is dependent upon that community for its existence, or if the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence. in that same context is defined in 3 AAC 110.990(5).

1 occasion to check back into the criteria which would be used for the
2 establishment of election districts. I find that except for two different words they
3 are the same as the criteria that you use for the establishment of boroughs:
4 population, geographic features, and the election districts say integrated socio-
5 economic areas, and you say economy and common interests which I think
6 means the same thing. Consequently, I might be led to the conclusion that your
7 thinking could well be carried out by making election districts and boroughs
8 contiguous or congruous, the same area, is that true?
9

10 ROSSWOG: It was thought this should be left very flexible. Of course, you would
11 not say they should be the same as election districts because of rather
12 unwieldiness for governing. It would more possibly, and should, take more study
13 of whether the size should bear on whether your governing body would be able
14 to supervise an area of that size.
15

16 PRESIDENT EGAN: Mr. Lee.
17

18 LEE: Mr. Hurley, I think we are unanimous in the opinion that many of these
19 boroughs will be substantially the same as election districts but that is just the
20 idea that we had in mind. Some of them won't be feasible, but in our thinking I
21 consider that form of boroughs we felt they would be much the same as an
22 election district.
23

24 PRESIDENT EGAN: Mr. Hellenenthal.
25

26 HELLENTHAL: Did any of you think that they might ever be greater than the
27 election districts in size?
28

29 LEE: If that question is directed to me, we did not give it any consideration
30 because actually we have not made any statement about the size. But in our
31 thinking we didn't consider that thought, but it is certainly very possible.
32

33 HELLENTHAL: In other words, that the boundaries of the election districts could
34 possibly be maximums governing the size of the boroughs?
35

36 LEE: It is possible. It is up to the legislature to decide.
37

38 HELLENTHAL: Would it be desirable to make them minimums?
39

40 LEE: That would take away the flexible portion which we wish to keep here.
41

42 HELLENTHAL: I gather then you would not desire to make them minimums but
43 probably would have little objection to making them maximum.
44

45 LEE: I can't speak for the Committee. I would have no objection, personally.
46

47 The framers envisioned that the initial State election districts would be, in many
48 cases, models for future boroughs. As originally adopted, Article VI, Section 6 of
49 Alaska's constitution established the following standards for drawing State House
50 election districts (emphasis added by underlining):⁸

⁸ Article VI was amended in 1999. The amendments dealt principally with the process for redistricting. However, two changes dealt somewhat with the standards. Both occurred in the third sentence which was revised as follows (added text in bold type and underlined,

Section 6. Redistricting. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

The Alaska Supreme Court addressed the meaning of the term “relatively integrated socio-economic area” with respect to election districts in *Hickel v. Southeast Conference*, 846 P.2d 38, 47 (Alaska 1992) (emphasis added):

The Alaska Constitution requires districts comprising “relatively integrated” areas. . . . “Relatively” means that we compare proposed districts to other previously existing and proposed districts as well as principal alternative districts to determine if socio-economic links are sufficient. “Relatively” does not mean “minimally,” and it does not weaken the constitutional requirement of integration.

The framers’ vision that the initial State election districts were, in many cases, models for future boroughs is reinforced by the fact that election district boundaries were used to define prospective boroughs in the 1963 Mandatory Borough Act. As introduced by Representative John L. Rader, the mandatory borough legislation called for the compulsory incorporation of the nine State election districts in Alaska that encompassed independent school districts.⁹

The mandatory borough legislation was introduced just four years after Alaska’s constitution took effect. The short interval between those two seminal events, in the view of the Commission, is further evidence of a post-constitutional convention consensus on the general acceptability of the early election districts as models for borough boundaries. In that respect, it is also noteworthy that six of the twenty members (30%) of the 1963 Senate had been delegates to the

deleted text struck through): “Each shall contain a population as near as practicable at least equal to the quotient obtained by dividing the total civilian population of the state by forty.”

⁹ House Bill No. 90 provided that the areas would be incorporated as boroughs by legislative fiat if the voters in those regions failed to form boroughs before January 1, 1964. The nine regions were designated as follows in Section 3 of House Bill No. 90:

- (1) Anchorage Election District;
- (2) Lynn Canal – Icy Straits Election District;
- (3) Ketchikan – Prince of Wales Election District;
- (4) Kodiak Election District;
- (5) Palmer – Wasilla – Talkeetna Election District;
- (6) Sitka Election District;
- (7) Fairbanks – Fort Yukon Election District;
- (8) Juneau Election District; and
- (9) Kenai – Cook Inlet Election District.

1 Constitutional Convention.¹⁰ Additionally, two members of the 1963 House of
2 Representatives had been Constitutional Convention delegates.¹¹

3
4 Moreover, it is significant that the use of election districts to define borough
5 boundaries in the 1963 mandatory borough legislation occurred just two years
6 after the Alaska Legislature first adopted statutory standards for incorporation of
7 boroughs. That fact becomes even more significant when it is recognized that 11
8 of the 20 Senators (55%) and 23 of the 40 Representatives (57.5%) in the 1963
9 Legislature had held the same elected offices during the 1961 Legislature.¹²

10
11 While the early State election districts were viewed by the framers to be, in many
12 cases, suitable borough models, the same is not necessarily true today. Social
13 and economic integration remains a fundamental characteristic of election
14 districts for the State of Alaska. However, subsequent social, political, and legal
15 developments have had great influence over the size and configuration of
16 election districts in Alaska. Social changes include a significantly greater
17 concentration of Alaska's population in southcentral Alaska. Political changes
18 include the uniform use of single-member election districts throughout Alaska.¹³
19 They also include the enactment of legislation such as the Federal Voting Rights
20 Act, which significantly influenced the configuration of election districts in Alaska.
21 Lastly, judicial rulings have shaped election districts. For example, in *Hickel v.*
22 *Southeast Conference, id.* at 62, the Alaska Supreme Court directed that certain
23 factors be given priority in the drawing of house election districts:¹⁴

24
25 Priority must be given first to the Federal Constitution, second to the federal
26 voting rights act, and third to the requirements of article VI, section 6 of the
27 Alaska Constitution. The requirements of article VI, section 6 shall receive priority
28 inter se in the following order: (1) contiguousness and compactness, (2) relative

¹⁰ The former delegates in the 1963 Senate were Senators Coghill, Kilcher, McNealy, Nolan, Peratrovich, and Smith.

¹¹ The former delegates that were members of the 1963 House of Representatives were Representatives Sweeney and Taylor.

¹² The Senators were Bronson, Coghill, Hopson, McNealy, Nolan, Owen, Peratrovich, Brad Phillips, Vance Phillips, Smith, and Walsh. The Representatives were Baggen, Baker, Binkley, Blodgett, Boardman, Cashel, Christiansen, Ditman, Hammond, Harris, Jarvela, Kendall, Kubley, Leonard, Longworth, Parsons, Pearson, Reed, Sanders, Stalker, Strandberg, Sweeney, and Taylor.

¹³ The initial election districts in the more populous areas of Alaska encompassed multiple House seats to retain their regional characteristics. Of the original 24 districts, five were two-member districts, one was a five-member district, and one was an eight-member district. The remaining seventeen districts were all single-member districts. The current plan utilizes forty single-member districts, which diminishes the regional character of those districts in the more populous areas.

¹⁴ The Alaska Supreme Court adhered to the same priorities in *re 2001 Redistricting Cases*, 44 P.3d 141 (Alaska 2002).

socioeconomic integration, (3) consideration of local government boundaries, (4) use of drainage and other geographic features in describing boundaries.

While it can no longer be said that election districts make for ideal borough boundaries in most cases, the original vision does provide a measure of the geographic scale within which boroughs were expected to exhibit a distinguishing degree of social, cultural, and economic integration.

On January 20, 1956, delegate Vic Fischer expressed the view that it is 'unimaginable' that a city would be the same size as a borough as reflected in the following exchange.¹⁵

GRAY: Mr. Chairman, I would like to ask the Committee a question. Is it possible under Section 5 that the city council complete would also be complete in the assembly? Is it quite possible?

V. FISCHER: I think that would be possible only if the borough was the same size as the city, or if the legislature provided that the people outside of the city shall have no representation.

GRAY: It could be so?

V. FISCHER: I could not imagine it happening.

Article X, Section 2 allows but does not require city governments within boroughs. When harmonized, Sections 1 and 2 favor merger, consolidation, or unification of city and borough governments.¹⁶

¹⁵ The dialog was also relevant in terms of original Article X, Section 4 of Alaska's constitution which provided in relevant part that:

Each city of the first class, and each city of any other class designated by law, shall be represented on the assembly by one or more members of its council. The other members of the assembly shall be elected from and by the qualified voters resident outside such cities.

The provision was repealed in 1972.

¹⁶ The Alaska Supreme Court holds that unification of local governments "is consistent with the purpose expressed in article X, section 1 of minimizing the number of local government units". *City of Douglas v. City and Borough of Juneau*, 484 P.2d 1040, 1044 (Alaska 1971). Unification is technically distinct from municipal consolidation and merger; however, all result in the reduction of the number of local governments. The Local Boundary Commission concluded with respect to municipal consolidation proposals in Haines (1998 and 2002), Fairbanks (2001), and Ketchikan (2001) that there is a preference in Article X, § 1 for the gradual elimination of cities within boroughs. The Commission noted further in those cases that the Committee on Local Government at the Constitutional Convention considered a borough encompassing no city governments to be the ideal structure of municipal government in Alaska. See *Statement of Decision in the Matter of the December 2000 Petition for Consolidation of the City of Haines and the Haines Borough*, Local Boundary Commission, p 19, March 20, 2002.

Part 5. Article X, Section 12. Boundaries.

Article X, Section 12 deals with borough standards in the sense that it provides that those standards will be applied by an independent commission with statewide jurisdiction based on statewide and regional considerations. The Specifically, Section 12 states:

SECTION 12. BOUNDARIES. A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action. .

Constitutional Convention delegates clearly intended the Local Boundary Commission to establish borough boundaries. When John Rosswog, Chairman of the Committee on Local Government, introduced Article X on the floor of the convention, he made the following remarks about Section 12:

The boundaries, we think, are quite an important question and should be under some agency which can establish them along the proper lines. They should not be left to the local community; they should be established by a higher authority.

Proceedings of the Alaska Constitutional Convention, Alaska State Legislature, Legislative Council p. 2612 (1963).

In the discussion of Article X, delegates repeatedly referred to the fact that a board or commission would establish borough boundaries. For example, as noted earlier, Delegate John Coghill made the following remarks during the discussion of Article X on the floor of the convention (emphasis added):

... "Each borough shall embrace, to the maximum extent possible, an area and population with common interests." My question here is directed to you to find out what the Committee's thinking was as to boundary areas of local government. Could you give us any light on that as to the extent? **I know that you have delegated the powers to a commission**, but you have said that each borough shall embrace the maximum extent possible.

Id., p. 2620-2621.

Remarks by Delegate Davis offer the following example (emphasis added):

... I realize that under the article as it is written that **the boundaries of boroughs are going to be set by a board established by the legislature.**

Id., p. 2627.

Of the 121 active State boards and commissions, only the Local Boundary Commission and four others have origins in the constitution.¹⁷

The Alaska Supreme Court observed that the Commission was created to serve as an impartial body to review, from a statewide perspective, proposals relating to the establishment and alteration of municipal governments. Specifically, the Court stated:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee:

. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

The Commission's central role in reviewing borough proposals is to ensure that boroughs are established at the State Level to reflect statewide considerations and regional criteria.

Part 6. Constitutional Provisions that Buttress the Fundamental Nature of Boroughs (Article X, Sections 5, 6, 7, and 13).

Subpart (a) Article X, Section 5. Service Areas.

Subpart (b) Article X, Section 6. Unorganized Boroughs.

Subpart (c) Article X, Section 7. Cities.

Subpart (d) Article X, Section 13. Agreements; Transfer of Powers.

Subpart (a) Article X, Section 5. Service Areas.

Section 5 of the Local Government Article deals with organized borough service areas. It states as follows:

Section 5. Service Areas. Service areas to provide special services within an organized borough may be established, altered, or abolished by the assembly, subject to the provisions of law or charter. A new service area shall not be established if, consistent with the purposes of

¹⁷ The other four are the (legislative) Redistricting Board, Judicial Council, Commission on Judicial Conduct, and the University Board of Regents.

1 this article, the new service can be provided by an existing service area,
 2 by incorporation as a city, or by annexation to a city. The assembly may
 3 authorize the levying of taxes, charges, or assessments within a service
 4 area to finance the special services.
 5

6 While the principle purpose of Section 5 is, of course, to establish a framework
 7 for organized borough service areas; it also provides yet another indication of the
 8 intended difference in scale between cities and boroughs. Section 5 reflects the
 9 vision on the part of Constitutional Convention delegates that, as relatively large
 10 units of government, boroughs require the capability to establish service areas to
 11 meet varying needs of particular parts of the boroughs. There is no comparable
 12 constitutional provision for service areas within city governments.¹⁸
 13

14 **Subpart (b) Article X, Section 6. Unorganized Boroughs.**

15
 16 Article X, Section 6 concerns unorganized boroughs. It is noteworthy in the
 17 context of constitutional principles relating to boroughs that Section 6 provides for
 18 multiple unorganized boroughs, not the single residual unorganized borough that
 19 has existed since 1961.
 20

21 Section 6 also provides for “maximum local participation and responsibility” in
 22 unorganized boroughs. Specifically, Article X, Section 6 states as follows:
 23

24 **SECTION 6. UNORGANIZED BOROUGHES.** The legislature shall
 25 provide for the performance of services it deems necessary or advisable
 26 in unorganized boroughs, allowing for maximum local participation and
 27 responsibility. It may exercise any power or function in an unorganized
 28 borough which the assembly may exercise in an organized borough.
 29

30 **Subpart (c) Article X, Section 7. Cities.**

31
 32 Section 7, concerning city governments, provides as follows:
 33

34 **SECTION 7. CITIES.** Cities shall be incorporated in a manner
 35 prescribed by law, and shall be a part of the borough in which they are
 36 located. Cities shall have the powers and functions conferred by law or
 37 charter. They may be merged, consolidated, classified, reclassified, or
 38 dissolved in the manner provided by law.
 39

40 While the focus of Section 7 concerns the nature of city governments, it provides
 41 still another indicator of the framers’ vision regarding the relative scale of city and
 42 borough governments by stating that cities, “shall be part of the borough in which

¹⁸ AS 29.45.580 authorizes city governments to establish differential property tax zones. It might be argued that, in certain respects, differential tax zones are the city equivalent to a borough service area. While both allow for the delivery of different levels of service, there is no constitutional recognition of a city differential tax zone. Thus, Article X, Section 5 is evidence of the intended large scale of boroughs by the Constitutional Convention delegates.

1 they are located.” That provision reinforces the perspective that boroughs are
2 relatively large units compared to cities.

3 4 **Subpart (d) Article X, Section 13. Agreements; Transfer of Powers.**

5
6 Article X, Section 13 deals principally with the intergovernmental agreements and
7 transfer of powers. It provides as follows:

8
9 **Section 13. Agreements; Transfer of Powers.** Agreements, including
10 those for cooperative or joint administration of any functions or powers,
11 may be made by any local government with any other local government,
12 with the State, or with the United States, unless otherwise provided by
13 law or charter. A city may transfer to the borough in which it is located
14 any of its powers or functions unless prohibited by law or charter, and
15 may in like manner revoke the transfer.

16
17 In the context of the nature of borough government, Section 13 authorizes a city
18 to transfer and revoke the transfer of city powers and functions to the borough in
19 which it is located. There is no similar constitutional provision for transfer of
20 borough powers and duties to cities. This asymmetry is consistent with the
21 notion that boroughs would have broader jurisdiction than cities.
22

23 **Section C. Statutory Standards for Borough Incorporation.**

24 Part 1. Background.

25 Part 2. AS 29.05.100. Decision.

26 Part 3. AS 29.05.031. Statutory Borough Standards.

27 28 **Part 1. Background.**

29
30 In their 1971 study of State-local relations, Thomas A. Morehouse and Victor
31 Fischer reflected that the statutory standards for borough incorporation were
32 overly general. They stated:

33
34 On the question of defining the extent of the area to be served by a
35 borough, the constitution is characteristically brief and general. It
36 states that boroughs “shall be established ... according to
37 standards *provided by law.*” (emphasis added) and that “the
38 standards shall include population, geography, economy,
39 transportation, and other factors. The Local Affairs Agency and the
40 Boundary Commission did little to improve or elaborate this
41 statement during their first two years of study and hearings, and the
42 legislature yielded to an sanctioned this omission with the Borough
43 Act of 1961. The “standards” provided by that act were, much like
44 the constitution itself, at a very high level of generality.
45

1 *Borough Government in Alaska*, Thomas A. Morehouse and Victor Fischer, p. 79
2 (1971).

3
4 Two sections of the current Alaska Statutes provide standards for borough
5 incorporation. Those are AS 29.05.100(a) and AS 29.05.031 which are
6 addressed, respectively, in parts 2 and 3 of this section of the report..
7

8 **Part 2. AS 29.05.100. Decision.**

9

10 AS 29.05.100(a) of the Alaska Statutes provides that the Local Boundary
11 Commission may approve a borough incorporation petition (with or without
12 amendments and conditions) only if it

- 13 1. meets all applicable constitutional standards;
 - 14 2. meets all applicable standards established in regulations adopted by the
15 Local Boundary Commission;
 - 16 3. meets all standards in AS 29.05.031, and
 - 17 4. is in the best interests of the state.
- 18

19 In full, AS 29.05.100(a) provides as follows:

20
21 **Sec. 29.05.100. Decision.** (a) The Local Boundary Commission may
22 amend the petition and may impose conditions on the incorporation. If
23 the commission determines that the incorporation, as amended or
24 conditioned if appropriate, meets applicable standards under the state
25 constitution and commission regulations, meets the standards for
26 incorporation under AS 29.05.011 or 29.05.031, and is in the best
27 interests of the state, it may accept the petition. Otherwise it shall reject
28 the petition.
29

30 **Part 3. AS 29.05.031. Statutory Borough Standards.**

31

32 In addition to the above, AS 29.05.031 of the Alaska Statutes provides what
33 amounts to six standards for boroughs. Specifically, it requires that a region may
34 incorporate as a borough only if
35

- 36 1. its population is socially, culturally, and economically
37 interrelated and integrated;
- 38 2. its population is large and stable enough to support borough
39 government;
- 40 3. the proposed borough boundaries conform generally to
41 natural geography
- 42 4. the proposed borough boundaries include all areas
43 necessary for full development of municipal services;
- 44 5. its economy of the area includes the resources capable of
45 providing municipal services;
- 46 6. land, water, and air transportation facilities allow the
47 communication and exchange necessary for the
48 development of integrated borough government.

Like the statutory borough standards first enacted in 1962, the current statutory standards remain very broad. For example, while AS 29.05.031 stipulates that the population of a borough must be “large enough” to support borough government, it provides no specific numerical population standard for boroughs. The other statutory standards are similarly general. In full, AS 29.05.031 states as follows:

Sec. 29.05.031. Incorporation of a borough or unified municipality.

(a) An area that meets the following standards may incorporate as a home rule, first class, or second class borough, or as a unified municipality:

(1) the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;

(2) the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services;

(3) the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;

(4) land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.

(b) An area may not incorporate as a third class borough.

The original 1962 statutory standards for borough incorporation used the term “area” several times. As reflected above, the same key word appears six times in the current standards. “Area”, of course, is also a fundamental term used in Article X, Section 3 of our constitution (i.e., “[e]ach borough shall embrace an **area** and population with common interests to the maximum degree possible”). The Commission ascribes significance to the fact that the term “area” is used both in Article X, Section 3 of the constitution and the statutory standards regarding borough.

In terms of the distinction between borough governments and city governments addressed in this chapter in Section B, Part 4 (regarding Article X, Section 2. Local Government Powers) it is also noteworthy that the statutory standards for city incorporation in place in 1962 used the terms “community”, “neighborhood”, “district”, or “village”.¹⁹ Thus, from the beginning, a distinction between

¹⁹ Former AS 29.10.006 authorized “a community having 400 or more permanent inhabitants” to incorporate a first class city. Former AS 29.15.010 authorized “a community having at least 50 permanent inhabitants” to form a second class city. Former AS 29.20.010 authorized “The permanent inhabitants and the real property owners of a neighborhood or district, not exceeding 50 square miles in area” to form a city of the third class. Former AS 29.25.030 authorized “A village that (1) is not included in, or part of, or within 10 miles of an incorporated city, or within five miles of an independent school district, and (2) has at least 25

community-based governments (cities) and regional governments (boroughs) has been evident in the statutory incorporation standards.²⁰

The parallel usage by the legislature of the term “area” for borough government and the term “community” (or similar expression) for city government gives force to the argument that the legislature purposely adopted the word “area” to refer to borough jurisdictions. Thus, AS 29.05.031 is viewed as legislative implementation of the previously addressed constitutional concept of boroughs embracing the large, natural regions.

The Alaska Supreme Court noted that the general nature of the statutory standards is an indication that the legislature intended those standard to be flexibly applied – but still in a “regional” context. In the same case, the Court recognized the diversity of Alaska and the need for broad policy discretion by the Local Boundary Commission when considering borough proposals.

The [statutory standards] were intended to be flexibly applied to a wide range of regional conditions. This is evident from such terms as “large enough”, “stable enough”, “conform generally”, “all areas necessary and proper”, “necessary or desirable”, “adequate level” and the like. The borough concept was incorporated into our constitution in the belief that one unit of local government could be successfully adopted to both urban and sparsely populated areas of Alaska, and the Local Boundary Commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate.

Mobil Oil v. Local Boundary Commission, 518 P.2d 92, 98-99 (Alaska 1974).

Section D. Alaska Administrative Code Standards for Borough Incorporation.

Part 1. Background.

Part 2. 3 AAC 110.045. Community of Interests.

Part 3. 3 AAC 110.050. Population.

Part 4. 3 AAC 110.055. Resources.

Part 5. 3 AAC 110.060. Boundaries.

Part 6. 3 AAC 110.065. Best Interests of State.

Part 7. 3 AAC 110.900-910. Transition & Non-Discrimination.

permanent inhabitants 19 years of age or older residing within a radius of three miles of a designated centrally located point or structure” to incorporate a village.

²⁰ As discussed above and in Section B, Part 4 of this chapter former and current statutory standards for city incorporation clearly imply a more limited territorial jurisdiction than the standards for borough incorporation (e.g., the requirement for 400 residents, no requirement for conformity with natural geography, no standard dealing with interrelation/integration as to social, cultural, and economic activities). Also, regulatory standards in 3 AAC 110.040(b)-(c) and 3 AAC 110.130(c)-(d) provide that city boundaries must include only territory comprising present and near future local community, and must not include entire geographical regions or large unpopulated areas.

Part 1. Background.

It is important to recognize that the previously noted 1974 ruling in *Mobil Oil* was rendered before the Commission had adopted regulatory standards for borough incorporation. Thus, the conclusion reached in *Mobil Oil* that the general statutory standards of AS 29.05.031 were intended to be flexibly applied to borough incorporation occurred in that backdrop. It would be incorrect to infer from *Mobil Oil* that the Legislature never intended the Commission to adopt specific standards governing borough incorporation.

Indeed, in 1959, the Legislature enacted a law requiring the Local Boundary Commission to “develop proposed standards and procedures for changing local boundary lines.” Sec 7, Ch. 64, SLA 1959. The phrase “changing local boundary lines” has been broadly interpreted to include borough incorporations.

For example, on February 15, 1991, Assistant State Attorney General Marjorie Odland addressed the point in a memorandum of opinion in the matter involving the proposed incorporation of the City and Borough of Yakutat. Assistant Attorney General Odland stated, “In our view ‘changing local boundary lines’ includes not only annexation or detachment proceedings but also incorporation proceedings.” Ms. Odland’s opinion on that point was tested shortly thereafter when the Yakutat petitioners challenged the Commission’s reliance on “non-statutory” standards in rendering its decision. The Alaska Supreme Court ruled as follows:

Petitioners lastly argue that, even if the LBC’s decision were construed as determining that the originally proposed borough boundaries failed to meet the statutory standards for incorporation, the LBC based its decision on non-statutory criteria and therefore erred. ... Petitioners’ arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt “the most desirable” borough boundaries. Given the Alaska Constitution’s mandate that boroughs be cohesive “to the maximum degree possible,”²¹ the LBC acted well within the purview of its authority in considering the desirability of future incorporation of neighboring areas such as Prince William Sound and the interests of affected land owners and users such as the Chugach Alaska Corporation.²² We find no merit to Petitioners’ claim of improper reliance on non-statutory criteria.

²¹ Alaska Const., art. X, § 3.

²² In their reply brief, Petitioners challenge the authority of the LBC to promulgate regulations such as 19 AAC 10.060(a)(1), which expressly authorized the LBC to consider “land use and ownership patterns” in determining compliance with the statutory standards set out in AS 29.05.031(a). See, e.g., *Warner v. State*, 819 P.2d 28, 32 n. 3 (Alaska 1991); *State v. Anderson*, 749 P.2d 1342, 1345 (Alaska 1988). We need not decide the issue, since even in the absence of the challenged regulations, the LBC clearly had authority to consider information and arguments such as those presented by the Chugach Alaska Corporation in

Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission, 900 P.2d 721, 727 (Alaska 1995).

Any ambiguity over legislative intent regarding the adoption of regulatory standards was eliminated while the Yakutat decision was pending appeal. In 1994, the Legislature rewrote the law to require the Commission to specifically **“adopt regulations providing standards and procedures for municipal incorporation**, annexation, detachment, merger, consolidation, reclassification, and dissolution.” (emphasis added)

Further, in 1999, the Legislature amended AS 29.05.100 to expressly require satisfaction of the borough incorporation standards adopted by the Commission in regulation as a condition for approval of a petition.

In *Port Valdez*, the Supreme Court held that there were three fundamental reasons for the legislative directive for the Commission to adopt standards.

We see three purposes underlying the statutory requirement of annexation standards. First, such standards expose the basic decision-making processes of the commission to public view and thus subject commission action to broad corrective legislation.²³ Second, the standards guide local governments in making annexation decisions and in preparing proposals for the commission. Frustration of these purposes cannot harm the opponent of annexation. Third, annexation standards objectify the criteria of decision-making and delineate the battleground for a public hearing.²⁴

Port Valdez Company, Inc., v. City of Valdez, 522 P.2d 1147, (Alaska 1974).

addressing the statutory standards articulated in AS 29.05.031(a). In particular, we note that AS 29.05.031(a)(1) gives the LBC power to consider whether “the population of the area [included in the proposed borough] is interrelated and integrated as to its social, cultural, and economic activities.”

²³ Our Nome opinion focused upon the commission’s failure to heed the legislature’s commands in exercising the commission’s jurisdiction and publicly accounting for its decisional process:

To (hold) otherwise would be to condone the commission’s nonobservance of a valid legislative prerequisite to the exercise of the commission’s discretion in matters of local boundary changes.

United States Smelting, Refining & Mining Co. v. Local Boundary Commission, 489 P.2d at 142.

²⁴ See *Mukluk Freight Lines, Inc. v. Nabors Alaska Drilling, Inc.*, 516 P.2d 408, 415 n. 23 (Alaska 1973).

1 The Commission has adopted standards specifically relating to borough
2 incorporation in five sections of the Alaska Administrative Code. Those sections
3 consist of the following:

- 4
- 5 1. 3 AAC 110.045. Community of Interests;
- 6 2. 3 AAC 110.050. Population;
- 7 3. 3 AAC 110.055. Resources;
- 8 4. 3 AAC 110.060. Boundaries; and
- 9 5. 3 AAC 110.065. Best Interests of State.

10
11 In addition, the Commission has adopted standards applicable to borough
12 incorporations and all other proposals that come before the Commission. Those
13 consist of the following sections:

- 14
- 15 1. 3 AAC 110.900. Transition;
- 16 2. 3 AAC 110.910. Statement of Non-Discrimination.
- 17

18 The Commission's standards for borough incorporation have remained largely
19 unchanged for more than a decade. In contrast to the constitutional and
20 statutory standards, the standards in the Alaska Administrative Code are more
21 specific. Each of the Alaska Administrative Code standards applicable to
22 boroughs is examined in the order listed above.

Part 2. 3 AAC 110.045. Community of Interests.²⁵

Subpart (a). Social, Cultural, and Economic Ties.

Subpart (b). Presumption of Multiple Communities.

Subpart (c). Communications and Exchange.

Subpart (d). Presumption Relating to Transportation and communication Ties.

The “Community of Interests” provisions in 3 AAC 110.045 consist of four subsections, (a) – (d), each of which sets out a distinct borough standard dealing with regional links. The four subsections relate to the following:

1. social, cultural, and economic integration and interrelation generally;
2. presumption of multiple communities;
3. requirement for adequate communications and exchange; and
4. presumption that communities are connected by road, flights, ferry service, or electronic communications.

Each of these four subsections are addressed below.

Subpart (a). Social, Cultural, and Economic Ties.

3 AAC 110.045(a) was adopted to further interpret and implement the fundamental characteristic of boroughs as set forth by constitutional and statutory

²⁵ The term “community of interests” as used in the title has no relation to the term “community” as defined by 3 AAC 110.990(5) and as determined under 3 AAC 110.920. Rather “community of interests” relates to the common interests throughout a region. The concept is explained in the following:

In reviewing a borough petition, the Local Affairs Agency investigates to determine whether the proposed borough is a “natural community” and exhibits a “community of interests.” In discussing the concept of “natural community,” the Agency has indicated that:

When it is stated that organized boroughs are local governments for natural communities, it does not mean that they are local governments for the limited community of the city, or the suburb, or of a group of farms or homesteads. It means that they are local governments for an entire natural community made up of a combination of cities, suburbs, and groups of farms...”

Areawide Local Government in the State of Alaska – the Genesis , Establishment, and Organization of Borough Government, Ronald C. Cease, p 56-57 (1964).

In rejecting a 1,400 square mile borough proposal encompassing Homer, Ninilchik, and Anchor Point in 1963, the Local Boundary Commission stated:

The Commission, however, believes that a large number of boroughs, spread among a limited number of taxpayers, would not only violate the concept of natural community, but would be cumbersome and necessarily costly. Chapter 52, SLA 1963 (CSHB #90), and the proposed boroughs designated therein, causes the Commission to believe the Legislature shares in this view.

Id., p. 62.

1 provisions calling for boroughs to encompass an area and population with
2 common interests.

3
4 The opening provisions of subsection (a) of 3 AAC 110.045 essentially mirror the
5 constitutional and statutory provisions. However, in addition, 3 AAC 110.045(a)
6 lists four factors that the Commission may consider (if determined to be relevant)
7 in applying the standard. Specifically, 3 AAC 110.045(a) states as follows:

8
9 (a) The social, cultural, and economic characteristics and activities of the people
10 in a proposed borough must be interrelated and integrated. In this regard, the
11 commission may consider relevant factors, including the

12 (1) compatibility of urban and rural areas within the
13 proposed borough;

14 (2) compatibility of economic lifestyles, and industrial or
15 commercial activities;

16 (3) existence throughout the proposed borough of
17 customary and simple transportation and communication patterns; and

18 (4) extent and accommodation of spoken language
19 differences throughout the proposed borough.

20
21 Moreover, 3 AAC 110.045(a) allows the Commission to consider other relevant
22 factors in judging social, cultural, and economic interrelation and integration. In
23 the most recent borough incorporation proceeding, the Commission considered
24 ten factors in addition to those listed in 3 AAC 110.045(a). Those consisted of
25 the following:

- 26
27 1. marine transportation, air transportation,
28 2. common major economic activity,
29 3. shared fishing areas,
30 4. common interest in management of State lands,
31 5. racial composition of the populace,
32 6. historical links,
33 7. geographic proximity,
34 8. dependence on a community for transportation, entertainment, news
35 and professional services,
36 9. geographical similarities, and
37 10. historical economic links.

38
39 The Alaska Supreme Court recognizes those ten factors to be relevant in judging
40 regional socio-economic interrelationships in the context of State election
41 districts. *Hickel v. Southeast Conference*, 846 P.2d 38, 46-47 (Alaska 1992).

42
43 As noted previously, Alaska's initial State election districts were viewed by the
44 Constitutional Convention delegates to be, in many cases, suitable borough
45 models. While changes over the nearly five decades that have passed since
46 Alaska's constitution was written have, in some cases, rendered election districts
47 less suitable as boroughs, social and economic integration remains a
48 fundamental characteristic of election districts for the State of Alaska.

1
2 In the recent application of the ten factors above, the Commission adopted the
3 view that judgments concerning borough formation warranted a similar approach
4 to that outlined by the Court with respect to election districts. To paraphrase the
5 Court, in terms of borough formation, comparisons should be made between a
6 proposed borough to other existing and proposed boroughs as well as principal
7 alternative boroughs to determine if socio-economic links are sufficient.

8
9 ***Subpart (b). Presumption of Multiple Communities.***

10
11 3 AAC 110.045(b) establishes a presumption that each borough will include
12 multiple communities. The presumption can be overcome by a compelling
13 demonstration that a single community borough otherwise meets the standards
14 for borough government.

15
16 The multiple-community standard reflects the fact that boroughs are regional
17 governments and that regions typically encompass more than one community.

18
19 Moreover, the requirement for multiple communities is consistent with the
20 minimum of local government units clause found in Article X, Section 1 of the
21 constitution. If single-community boroughs are formed, the result would be a
22 proliferation of boroughs rather than a constriction on their formation.

23
24 In full, 3 AAC 110.045(b) states as follows:

25
26 **3 AAC 110.045 (b).** Absent a specific and persuasive showing to the
27 contrary, the commission will presume that a sufficient level of
28 interrelationship cannot exist unless there are at least two communities
29 in the proposed borough.

30
31 The Commission's regulations (at 3 AAC 110.990(5)) define a community to be
32 "a social unit comprised of 25 or more permanent residents as determined under
33 3 AAC 110.920." 3 AAC 110.920 provides the following guidelines for
34 determining whether a community exists:

35
36 **3 AAC 110.920. DETERMINATION OF COMMUNITY**

37 (a) In determining whether a settlement comprises a community,
38 the commission may consider relevant factors, including whether the

39 (1) settlement is inhabited by at least 25 individuals;

40 (2) inhabitants reside permanently in a close
41 geographical proximity that allows frequent personal contacts and
42 comprise a population density that is characteristic of neighborhood
43 living; and

44 (3) inhabitants residing permanently at a location are a
45 discrete and identifiable social unit, as indicated by such factors as
46 school enrollment, number of sources of employment, voter registration,
47 precinct boundaries, permanency of dwelling units, and the number of
48 commercial establishments and other service centers.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if

(1) public access to or the right to reside at the location of the population is restricted;

(2) the population is adjacent to a community and is dependent upon that community for its existence; or

(3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

Subpart (c). Communications and Exchange.

3 AAC 110.045(c) requires that facilities must allow communication and exchange necessary for effective governance on a regional scale. In judging the satisfaction of the standard, 3 AAC 110.045(c) provides that the Commission may consider frequency of service, expense of travel, impediments to communication and travel, and availability of electronic media.

In full, 3 AAC 110.045(c) provides as follows:

(c) The communications media and the land, water, and air transportation facilities throughout the proposed borough must allow for the level of communications and exchange necessary to develop an integrated borough government. In this regard, the commission may consider relevant factors, including

(1) transportation schedules and costs;

(2) geographical and climatic impediments;

(3) telephonic and teleconferencing facilities; and

(4) electronic media for use by the public.

Subpart (d). Presumption Relating to Transportation and Communication Ties.

3 AAC 110.045(d) establishes a presumption of minimum requirements for the suitability of transportation and communication facilities. It presumes that communities within a prospective borough are connected to the proposed borough seat by at least one of the following:

1. public roadway,
2. regular scheduled airline flights on at least a weekly basis,
3. regular ferry service on at least a weekly basis,
4. charter flight service based in the proposed borough, or
5. sufficient electronic media communications.

In full, the standard provides as follows:

3 AAC 110.045(d). Absent a specific and persuasive showing to the contrary, the commission will presume that communications and exchange patterns are insufficient

1 unless all communities within a proposed borough are connected to the seat of the
2 proposed borough by a public roadway, regular scheduled airline flights on at least a
3 weekly basis, regular ferry service on at least a weekly basis, a charter flight service
4 based in the proposed borough, or sufficient electronic media communications.
5
6

7 **Part 3. 3 AAC 110.050. Population.**

8 Subpart (a). Factors Relating to Population Size and Stability.

9 Subpart (b). Presumption of a 1,000 Minimum Population.

10
11 The “population” provisions in 3 AAC 110.050 consist of two subsections, (a) –
12 (b). The first echoes statutory requirements for a large and stable population; it
13 also lists particular measures that the Commission may use to evaluate the size
14 and stability of the population. The second subsection establishes a presumptive
15 standard that each borough will have at least 1,000 residents.
16

17 These standards are addressed below.
18

19 ***Subpart (a). Factors Relating to Population Size and Stability.***

20
21 The standard in 3 AAC 110.050(a) ostensibly calls for a review of population
22 characteristics in the context of a particular borough proposal. However, that
23 standard must be interpreted and applied in the context of its statutory and
24 constitutional basis. In other words, if the particular borough proposal does not
25 exhibit the essential characteristics of a borough, its population – no matter how
26 large or stable – cannot satisfy the standard.
27

28 3 AAC 110.050(a) sets out five factors that the Local Boundary Commission may
29 consider regarding the size and stability of a borough. However, if other factors
30 are relevant, the Commission may consider those as well. 3 AAC 110.050(a)
31 states as follows:
32

33 The population of a proposed borough must be sufficiently
34 large and stable to support the proposed borough
35 government. In this regard, the commission may consider
36 relevant factors, including

- 37 (1) total census enumerations;
38 (2) durations of residency;
39 (3) historical population patterns;
40 (4) seasonal population changes; and
41 (5) age distributions.
42
43

44 ***Subpart (b). Presumption of a 1,000 Minimum Population.***

45
46 3 AAC 110.050(b) establishes a presumption that each borough will have at
47 least 1,000 residents. It reads as follows:

Absent a specific and persuasive showing to the contrary, the commission will presume that the population is not large enough and stable enough to support the proposed borough government unless at least 1,000 permanent residents live in the proposed borough.

The 1,000 person minimum population standard has a basis in statutory law regarding the formation of new school districts. AS 14.12.025 prohibits the creation of a new school district if that new district would have fewer than 250 students. An exception can be granted only if it is demonstrated to the Commissioner of Education that there is a broad public interest in forming a smaller district. Specifically, the law states as follows:

Sec. 14.12.025. New school districts. Notwithstanding any other provision of law, a new school district may not be formed if the total number of pupils for the proposed school district is less than 250 unless the commissioner of education and early development determines that formation of a new school district with less than 250 pupils would be in the best interest of the state and the proposed school district.

Generally, the student population in Alaska comprises about one-fifth (20%) of the total population. Thus, to meet the standard set out in AS 14.12.025, a proposed new district would have to have roughly at least 1,250 residents. Any time a borough is formed, it creates a new school district.²⁶ Thus, the de facto standard set out in AS 14.12.025 has a significantly higher threshold than the standard set out in 3 AAC 110.050(b)

Part 4. 3 AAC 110.055. Resources.

The economy of a proposed borough must include the human and financial resources necessary to provide essential borough services on an efficient, cost-effective level. In this regard, the commission

(1) will consider

(A) the reasonably anticipated functions of the proposed borough;

(B) the reasonably anticipated expenses of the proposed borough;

(C) the ability of the proposed borough to generate and collect local revenue, and the reasonably anticipated income of the proposed borough;

(D) the feasibility and plausibility of the anticipated operating and capital budgets through the third full fiscal year of operation;

(E) the economic base of the proposed borough;

(F) property valuations for the proposed borough;

(G) land use for the proposed borough;

(H) existing and reasonably anticipated industrial, commercial, and resource development for the proposed borough; and

²⁶ AS 14.12.010(2) provides that “each organized borough is a borough school district.”

(l) personal income of residents of the proposed borough; and

(2) may consider other relevant factors, including

(A) the need for and availability of employable skilled and unskilled persons to serve the proposed borough; and

(B) a reasonably predictable level of commitment and interest of the population in sustaining a borough government.

3 AAC 110.970. DETERMINATION OF ESSENTIAL CITY OR BOROUGH SERVICES

(a) If a provision of this chapter provides for the identification of essential borough services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the territory; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(b) The commission may determine essential borough services to include

(1) assessing and collecting taxes;

(2) providing primary and secondary education;

(3) planning, platting, and land use regulation; and

(4) other services that the commission considers reasonably necessary to meet the borough governmental needs of the territory.

(c) If a provision of this chapter provides for the identification of essential city services, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that, as determined by the commission,

(1) are reasonably necessary to the community; and

(2) cannot be provided more efficiently and more effectively

(A) through some other agency, political subdivision of the state, regional educational attendance area, or coastal resource service area; or

(B) by the creation or modification of some other political subdivision of the state, regional educational attendance area, or coastal resource service area.

(d) The commission may determine essential city services to include

(1) levying taxes;

(2) for a city in the unorganized borough, assessing and collecting taxes;

(3) for a first class or home rule city in the unorganized borough, providing primary and secondary education in the city;

(4) public safety protection;

(5) planning, platting, and land use regulation; and

(6) other services that the commission considers reasonably necessary to meet the local governmental needs of the community.

Boroughs must have resources to operate efficiently and effectively. This standard offers specific factors that the Commission must consider and others that it may consider in judging whether the area has ample resources.

Part 5. 3 AAC 110.060. Boundaries.

Subpart (a). Conformance with Natural Geography and Efficient Jurisdictional Area.

(a) The boundaries of a proposed borough must conform generally to natural geography, and must include all land and water necessary to provide the full development of essential borough services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including

- (1) land use and ownership patterns;
- (2) ethnicity and cultures;
- (3) population density patterns;
- (4) existing and reasonably anticipated transportation patterns and facilities;
- (5) natural geographical features and environmental factors; and
- (6) extraterritorial powers of boroughs.

Proper application of the natural geography standard involves more than a simple determination whether the boundaries of a proposed borough merely follow, in some general fashion, *any* identifiable natural geographical features.

The appropriate interpretation of the standard is whether the a borough proposal conforms generally to natural geography *on the scale intended for a borough government*. The broader interpretation reflects that the constitutional convention delegates intended boroughs to encompass large geographic areas.

The geography standard set out in AS 29.05.031(a)(2) and 3 AAC 110.060(a) warrants a broad application is buttressed when considered in the context of the closely related standards.

Subpart (b). Presumption Favoring Model Borough Boundaries.

3 AAC 110.060(b) provides for consideration of “model borough boundaries” by the Commission in reviewing the suitability of any borough incorporation proposal. Specifically, it states:

3 AAC 110.060(b). Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

1 In a narrow sense, the standard allows any boundary proposal that does not
2 exceed the model borders. However, in a broader sense, the standard at issue
3 concerns the fundamental relationship between the boundaries of a proposed
4 borough and its respective model.

5 In past borough incorporation and annexation proceedings, the Commission has
6 considered this standard in that broad context. For example, in 1998, the
7 Ketchikan Gateway Borough petitioned the Local Boundary Commission to
8 annex all but 21.4 square miles of the territory within its model borough
9 boundaries. The exclusion of the 21.4 square miles would have rendered Hyder
10 an enclave consisting of 17.9 square miles inhabited by 151 residents.
11 Additionally, Meyers Chuck would have become a near-enclave of 3.5 square
12 miles in which 28 individuals lived. The Commission viewed the two exclusions
13 as problematic and invited the Borough to amend its petition to include those
14 areas. After the Borough declined to do so, the Commission denied its petition.
15 In doing so, the Commission noted as follows:

16 The effect and significance of the failure of a borough proposal to conform to its
17 model boundaries must be judged in the unique circumstances presented by
18 each petition. . . .

19
20 The Commission believes that some deference is owed to the model borough
21 boundaries beyond that called for in a narrow interpretation of 19 AAC
22 10.190(c).²⁷

23
24 . . . the Borough's model boundaries also reflect the application of all borough
25 boundary standards and relevant constitutional principles to the pertinent facts in
26 the Borough's circumstances. In the record, there is insufficient justification for
27 deviation from those model boundaries here.

28
29 *Statement of Decision in the Matter of the February 28, 1998 Petition of the*
30 *Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, Local
31 Boundary Commission, page 7 (April 16, 1999).

32
33 The Local Boundary Commission defined model borough boundaries for
34 unorganized areas of Alaska from 1990 through 1992 using the constitutional,
35 statutory, and regulatory standards for the creation of boroughs.

36
37 During the three-year effort, the Commission concluded that, in many instances,
38 the boundaries of REAAs were also model boundaries for future boroughs.
39 REAAs are regional governmental institutions established more than a quarter
40 century ago for the efficient and effective delivery of services. REAAs have a
41 single function – education. It is significant that education is also one of the few
42 mandatory duties of boroughs and is their greatest responsibility as measured by
43 expenditures.

44

²⁷ Since renumbered as 3 AAC 119.190(c).

1 Statutory standards for REAAs set out in AS 14.08.031 are very similar to those
2 for boroughs. When REAAs were created in 1975, they were widely perceived
3 as forerunners to organized boroughs. As described in detail in Subpart (c) of this
4 section of the report, REAA boundaries have strong parallels to borough
5 boundaries. The historical record demonstrates the fundamental relevance of
6 REAAs in terms of establishing boundaries of boroughs.

7
8 The Commission used model borough boundaries (and other factors) in this
9 review of the unorganized borough.

10
11 As noted earlier, Alaska's constitution requires the division of the entire state into
12 organized and/or unorganized boroughs. The division must occur according to
13 standards including population, geography, economy, transportation, and other
14 factors. Each organized and unorganized borough must embrace an area and
15 population with common interests. (Article X, Section 3) The constitution also
16 favors a minimum number of boroughs. (Article X, Section 1)

17
18 The Borough Act of 1961 created a single unorganized borough encompassing
19 all of Alaska not within an organized borough.²⁸ Since there were no organized
20 boroughs at that time, the entire state was initially configured as a single
21 unorganized borough.

22
23 "Dividing" the entire state into a single borough brushed aside the constitutional
24 requirement that each borough embrace an area of common interests. Alaska,
25 of course, has tremendous diversity with respect to social, cultural, economic,
26 transportation, geographic, and other relevant characteristics.

27
28 Today, more than four decades after the Borough Act of 1961, the single residual
29 unorganized borough encompasses an estimated 374,843 square miles – 57% of
30 Alaska. The unorganized borough is larger than the countries of France and
32 Germany combined.

34
36 Insert map showing the unorganized borough



38 As currently configured, the
40 unorganized borough ranges in a
42 non-contiguous fashion from the
44 southernmost tip of Alaska to an
46 area approximately 150 miles
48 above the Arctic Circle. It also
50 extends in a non-contiguous
52 manner from the easternmost point
53 in Alaska (at Hyder) to the
54 westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized
55 borough encompasses:

²⁸ Ch 146, SLA 1961.

- portions of each of Alaska's 4 judicial districts;
- 11 entire census districts;
- all or portions of 10 State House election districts;
- all or portions of 6 State Senate election districts;
- 19 entire regional education attendance areas;
- all or portions of 10 of Alaska's 12 regional Native corporations formed under ANCSA;
- 18 entire model boroughs;²⁹ and
- model borough territory for 5 existing organized boroughs.

Clearly, the unorganized borough remains a vast area with extremely diverse interests rather than common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many election districts, census districts, regional educational attendance areas, regional Native corporations, and model borough boundaries.

Approximately three-quarters of unorganized borough residents live within model boroughs that are identical (or nearly so) to their respective REAAs

In the late 1980s, the Local Boundary Commission received a number of competing proposals to annex and incorporate various portions of the unorganized borough.³⁰ The Commission concluded that it would be best to

²⁹ With the consolidation of the Aleutians West Model Borough and the Aleutians Model Borough, the number of model unorganized boroughs was reduced from nineteen to eighteen.

³⁰ In October of 1988, the Kodiak Island Borough petitioned to annex an estimated 12,825 square miles (including submerged land and water beyond the State's jurisdictional limits). That prompted residents of the Alaska Peninsula to file a competing petition for the incorporation of the Lake and Peninsula Borough. The proposed Lake and Peninsula Borough contained an estimated 16,675 square miles, including much of the territory proposed for annexation to the Kodiak Island Borough. In May of 1989, the Fairbanks North Star Borough petitioned to annex 216 square miles. Annexation was widely opposed by residents of the adjacent unorganized area. The Fairbanks annexation petition prompted the adjacent region to conduct a study of the feasibility of forming a borough; however, no competing petition was filed. In June of 1989, the City and Borough of Juneau petitioned to annex 140 square miles. Again, while the annexation proposal was opposed by inhabitants of the adjacent region, no competing borough proposal was filed. In June of 1989, the Matanuska-Susitna Borough petitioned to annex an estimated 9,844 square miles to and including Healy. In October of that year, residents of the Railbelt Regional Educational Attendance Area filed a competing petition for the formation of the Denali Borough. The boundaries of the proposed Denali Borough encompassed an estimated 9,406 square miles, including much of the territory proposed for annexation by the Matanuska-Susitna Borough. That same month, another group of residents filed a third competing petition for incorporation of the Valleys Borough. The Valleys Borough proposal encompassed about 14,900 square miles, including most of the proposed Denali Borough as well as the community of Nenana.

1 examine those and future borough proposals in the context of model boundaries
2 based on constitutional, statutory, and regulatory standards for borough
3 incorporation.

4
5 Consequently, the Commission initiated the effort to define model borough
6 boundaries in 1990. The project was completed at the end of 1992. The Alaska
7 Legislature appropriated funding for the project. The Local Boundary
8 Commission conducted hearings regarding model borough boundaries in person
9 or by teleconference in 88 communities.

10
11
12
13 **Subpart (b)(i). Eight model boroughs conform precisely to REAAs.**

14
15 Eight model boroughs have boundaries that correspond precisely to individual
16 regional educational attendance areas (REAAs) as listed below.

- 17
18 1. The Annette Island Model Borough boundaries are identical to those of the
19 Annette Island REAA;
20 2. The Bering Strait Model Borough boundaries are identical to those of the
21 Bering Strait REAA (including the City of Nome);
22 3. The Copper River Model Borough boundaries are identical to those of the
23 Copper River REAA;
24 4. The Dillingham-Nushagak-Togiak Model Borough boundaries are identical to
25 those of the Southwest Region REAA (including the City of Dillingham);
26 5. The Iditarod Model Borough boundaries are identical to those of the Iditarod
27 REAA;
28 6. The Kuspuk Model Borough boundaries are identical to those of the Kuspuk
30 REAA;
32 7. The Pribilof Islands Model
34 Borough boundaries are
36 identical to those of the
38 Pribilof Islands REAA;
40 8. The Prince William Sound
42 Model Borough boundaries
44 are identical to those of the
46 Chugach REAA (including the
48 City of Cordova and the City
50 of Valdez).

Insert map highlighting the 8 REAAs listed

52
54 The eight model boroughs listed
56 above have a combined
57 estimated population of 29,158. That figure represents approximately 35.7% of
58 the total population of the unorganized borough.

Subpart(b)(ii). Two additional model boroughs conform to REAAs except that they also include tiny enclave federal transfer REAAs

There are currently nineteen REAAs in Alaska. Only seventeen of those were created in 1975 according to regional standards in AS 14.08.031. The remaining two REAAs – Kashunamiut and Yupiit – were established according to an act of the Legislature (Chapter 66, SLA 1985).

The Kashunamiut REAA and the Yupiit REAA are referred to in the 1985 law authorizing their creation as “federal transfer REAAs.” The two federal transfer REAAs lack the regional characteristics of the seventeen REAAs established under AS 14.08.031. Instead, they exhibit community level characteristics similar to those of city school districts.

The Kashunamiut federal transfer REAA is a relatively tiny enclave within the Lower Yukon REAA. The boundaries of the Kashunamiut federal transfer REAA are identical to those of the second class City of Chevak (population 765).³¹ They encompass slightly more than 1 square mile. In contrast, the Lower Yukon REAA encompasses an estimated 19,302 square miles. The first class City of Saint Mary’s is also within the Lower Yukon Model Borough.

The Yupiit federal transfer REAA is made up of three small non-contiguous enclaves within the Lower Kuskokwim REAA. One is the territory within the boundaries of the City of Akiak (encompassing approximately 2 square miles), another is the territory within the former City of Akiachak (encompassing less than 12 square miles) and the third is the territory within the former City of Tuluksak (encompassing approximately 4 square miles). Collectively those three non-contiguous enclaves encompass approximately 18 square miles. In contrast, the Lower Kuskokwim REAA comprises an estimated 23,792 square miles.

Insert map showing the Lower Yukon, Kashunamiut, Lower Kuskokwim, and Yupiit REAAs

³¹ If effect, this circumstance allows residents of a second class city in the unorganized borough a similar level of local control over school functions as is accorded organized boroughs and home rule and first class cities in the unorganized borough. Unlike municipal school districts, however, the federal transfer REAAs are not subject to the local contribution requirements that applies to city and borough school districts.

1 The Lower Yukon Model Borough and Lower Kuskokwim Model Borough are
2 inhabited by an estimated 21,461 residents. That population, together with the
3 estimated 29,158 residents of the eight previously noted model boroughs,
4 contains approximately 61.9% of the population of the unorganized borough.

5
6 **Subpart (b)(iii). Two other model boroughs largely conform to REAAs**
7 **except for the placement of relatively small portions of the REAAs within**
8 **the model boundaries of adjoining existing organized boroughs**
9

10 AS 14.08.031 requires the division of the entire unorganized borough into
11 REAAs. In some cases, the result has been unnatural or contrived REAA
12 boundaries. For example, Klukwan, which is an enclave in the core of the
13 Haines Borough, is a non-contiguous component of the Chatham REAA. In the
14 Commission's view, Klukwan has greater social, cultural, economic, geographic,
15 transportation, and other ties to the area within the Haines Borough than it does
16 to communities served by the Chatham REAA. Consequently, the Commission
17 placed Klukwan in the same model borough as the Haines Borough. For similar
18 reasons, the Commission placed parts of the unorganized borough within the
19 model boundaries of four other existing organized boroughs.

20
21 In two of the five cases, remnant model boroughs were created that largely
22 conform to their respective REAAs. Those are the Yukon Flats Model Borough
23 and the Yukon Koyukuk Model Borough.

24
25 The Yukon Flats Model Borough boundaries are identical to those of the Yukon
26 Flats REAA except that Livengood and Central were placed within the Fairbanks
27 North Star Borough model boundaries. The Commission concluded that
28 Livengood and Central had more in common with the area inside the Fairbanks
29 North Star Borough than it did with the remainder of the area within the Yukon
30 Flats REAA. In particular, road
31 connections, proximity, and economic
32 ties between Fairbanks, Livengood, and
33 Central were significant factors guiding
34 the Commission's action.

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42
43 Livengood and Central comprise 163
44 residents, representing approximately
45 10% of the population of the Yukon Flats
46 REAA. In other words, approximately
47 90% of the Yukon Flats REAA
48 population remains within the Yukon
49 Flats Model Borough.

50
51
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57
58
59 Similarly, the Yukon Koyukuk Model
60 Borough boundaries are identical to
61 those of the Yukon Koyukuk REAA
62
63

Insert map showing distinctions
between the Yukon Flats REAA and
Yukon Flats Model Borough as well as
the difference between the Yukon-
Koyukuk REAA and Yukon Koyukuk
Model Borough

except that Nenana and the nearby settlement of Four Mile Road were placed within the Denali Borough model boundaries. Here again, the Commission concluded that Nenana and Four Mile Road had more in common with the area inside the Denali Borough than it did with the remainder of the area within the Yukon Koyukuk REAA. Road connections, proximity, and economic ties were critical factors leading to the Commission's action.

Nenana and Four Mile Road are inhabited by 440 residents, or 12.0% of the 3,669 residents within the Yukon Koyukuk REAA (including Tanana, Galena, and Nenana). In this case, 88% of the population of the Yukon Koyukuk REAA remains intact as the Yukon Flats Model Borough.

The Yukon Flats Model Borough and the Yukon Koyukuk Model Borough encompass an estimated 4,188 residents. That population, together with the estimated 50,619 residents of the ten previously noted model boroughs, includes approximately 67.0% of the population of the unorganized borough.

Subpart (b)(iv). Two model boroughs encompass two former REAAs that have since merged; another model borough encompasses two existing REAAs.

When the Commission undertook the model boundaries project, Adak and Shemya were substantial military bases in the Aleutian islands. At the time, Adak existed as an REAA separate from the adjoining Aleutian Region REAA. Military operations at Adak have since ceased and the base has closed. Similarly, Earekson Air Force Station on Shemya closed and is currently maintained by a small group of caretakers. The Adak REAA was subsequently merged with the Aleutian Region REAA.

In the course of this review, the Commission merged the Aleutians Military Model Borough and the Aleutians West Model Borough.

The Aleutians Military Model Borough and the Aleutians West Model Borough are inhabited by an estimated 4,781 residents. That population, along with the

**One model borough is
composed of two REAAs**

estimated 54,807 residents of the twelve previously noted model boroughs, comprises approximately 72.9% of the population of the unorganized borough.

The Upper Tanana Basin Model Borough covers the combined areas of the Delta Greely REAA and the Alaska Gateway REAA. At the

time that the boundaries of the Upper Tanana Basin Model Borough were defined, the prospect existed for base realignment and closure at Fort Greely in the Delta Greely REAA. That, in part, prompted the Commission to combine the two REAAs into one model borough.

With the recent selection of Fort Greely as a research site for the U.S. missile defense system and the prospect for development of the Pogo mineral deposit as a world-class gold mine, the economic future for the Delta Greely region is brighter than it was in the early 1990s. Changing circumstances in that part of the unorganized borough might warrant modification of the previously established model boundaries. The Upper Tanana Basin Model Borough encompasses an estimated 6,316 residents, or 7.7% of the unorganized borough population.

About 2% of the unorganized borough population lies within the model boundaries of organized boroughs

As noted earlier, the Commission found in the course of the model borough boundaries project that five areas of the unorganized borough had greater ties to existing organized boroughs than they did to other areas of the unorganized borough. Specifically, the Commission determined the following:

- the City and Borough of Juneau model boundaries were defined to include Hobart Bay (population 3);
- the Denali Borough model boundaries were defined to include Nenana (population 402) and Four Mile Road (population 38);
- the Fairbanks North Star Borough model boundaries were defined to include Livengood (population 29) and Central (population 134);
- the Ketchikan Gateway Borough model boundaries were defined to include Meyers Chuck (population 21) and Hyder (population 97);
- the Lynn Canal Borough model boundaries (encompassing the existing Haines Borough) were defined to include Klukwan (population 139) and Skagway (population 862).

Collectively, the five areas listed above are inhabited by 1,725 individuals, or 2.1% of the population of the unorganized borough.

The remainder of the unorganized borough is comprised of four model boroughs in southeast Alaska

Except for parts of Alaska's panhandle noted above that are included within the model boundaries of existing boroughs, the Commission divided the unorganized areas of southeast Alaska into four model boroughs. Those are the Glacier Bay Model Borough, Chatham Model Borough, Prince of Wales Model Borough, and Wrangell-Petersburg Model Borough. Collectively, those four model boroughs are inhabited by 13,637 residents, or 16.7% of the unorganized borough.³²

³² The various percentages of the population of the unorganized borough stated in this section of the Report total 99.5%. The one-half of one percent discrepancy stems largely from the fact that Census data are not available to indicate in which model boroughs 349 residents of the unorganized borough (four-tenths of 1% of the unorganized borough population) live. The other one-tenth of one percent discrepancy is due to rounding.

1
2 The Glacier Bay Model Borough encompasses communities that are presently
3 within the Chatham REAA. The population of the Glacier Bay Model Borough
4 (1,739) comprises approximately 50.5% of the population of the Chatham REAA.
5 Because of the particularly unnatural or contrived nature of the Chatham REAA
6 boundaries (e.g., comprised of three non-contiguous components), 29.1% of its
7 population is found within the model boundaries of an existing borough. The
8 remaining 20.4% of the Chatham REAA population is grouped with Kake in the
9 Chatham Model Borough.

10
11 The Prince of Wales Model Borough is within the Southeast Island REAA. Its
12 population is 4,651, or 40.9% of the population of the area within the Southeast
13 Island REAA. The Wrangell-Petersburg Model Borough comprises 48.6% of the
14 population within the Southeast Island REAA boundaries. The balance of the
15 population within the Southeast Island REAA is comprised of Kake, Hyder, and
16 Meyers Chuck, whose location within model boroughs was addressed previously.

17
18 The Commission views model borough boundaries as a credible and useful tool
19 in guiding future policy decisions regarding the establishment and alteration of
20 borough governments. Recently, the concept of model borough boundaries has
21 been challenged by certain interested organizations. The challenge seems to
22 have its roots in a recent decision of the Commission to reject a particular
23 borough proposal.

24
25 On September 27, 2002, the Local Boundary Commission unanimously denied a
26 petition to incorporate a Skagway borough principally because the proposal
27 lacked the regional nature that is fundamental to boroughs. Petitioners for the
28 Skagway borough subsequently filed a judicial appeal.³³ As reflected in the
29 following newspaper account, Skagway also pledged to undertake an effort to
30 encourage the legislature to review the model borough boundaries and other
31 borough standards.³⁴

32
33 In addition to a legal path, Skagway plans to take its concerns about borough formation
34 to the state Legislature, [Skagway City Manager and Petitioner's Representative Bob]
35 Ward said. The community has asked the Alaska Municipal League and the Southeast
36 Conference, a regional organization, for support.

37
38 "We're asking the Legislature to look at the Model Borough Boundaries Act³⁵ and look at
39 the standards ... with an eye to considering whether or not those things are still pertinent

³³ The appeal was filed in Superior Court in Juneau on November 27, 2002 (Case No. 1JU-02-01024CI).

³⁴ *Juneau Empire*, November 15, 2002.

³⁵ There is no "Model Borough Boundaries Act". As noted above, model borough boundaries were defined by the Local Boundary Commission with support from the Legislature.

1 in the Alaska of today as opposed to the Alaska envisioned by the members of the
2 Constitutional Convention in 1956," Ward said. "I'm not sure if it will help us, but it may
3 help the borough process in general."
4

5 At the apparent behest of Skagway, the Southeast Conference³⁶ Alaska
6 Municipal League³⁷ and the City of Petersburg adopted resolutions in 2002
7 declaring the model borough boundaries to be outdated and unfeasible. The
8 resolutions adopted by those three organizations declared "... the economics of
9 the State have dramatically declined and changed within the past ten years,
10 rendering the Model Borough Boundary proposal of 1992³⁸ obsolete and
11 impractical."
12

13 None of the organizations advised the Commission about the proposed
14 resolutions before they acted on them. Consequently, the Commission had no
15 opportunity to comment on the matter while it was under consideration by those
16 organizations.
17

18 The Commission differs with the views expressed by those organizations in two
19 fundamental respects. The first concerns the claim that Alaska's economy has
20 "dramatically declined" during the past decade. The second concerns the
21 relationship between the state of the economy and model borough boundaries.
22

23 With respect to the first issue, while particular segments of Alaska's economy
24 (e.g., commercial salmon fishing and timber) have indeed suffered sharp
25 declines over the past decade, other components of Alaska's economy have
26 grown. In the Commission's view, Alaska's economy has not "dramatically
27 declined" overall during the last ten years. Certainly, there has been no
28 economic decline comparable to the post-TAPS construction downturn of the late

However, the Legislature never formally adopted the model borough boundaries. The Commission adopted model borough boundaries by regulation.

³⁶ The Southeast Conference describes itself as a "regional, nonprofit corporation that advances the collective interests of the people, communities and businesses in southeast Alaska. Members include municipalities, Native corporations and village councils, regional and local businesses, civic organizations and individuals from throughout the region. Our mission is to undertake and support activities that promote strong economies, healthy communities and a quality environment in southeast Alaska." <
<http://www.seconference.org/>>

³⁷ The Alaska Municipal League (AML) is a voluntary, nonprofit, nonpartisan, statewide organization of over 140 cities, boroughs, and unified municipalities in Alaska, representing over 98 percent of Alaskan residents. AML also offers Associate status to organizations and commercial firms, and Affiliate status to professional associations of municipal officials. <
http://www.akml.org/index.asp?Type=B_BASIC&SEC={5F567EBE-14AF-4F10-B368-B5A3C16F017B}>

³⁸ There is no "Model Borough Boundary proposal of 1992". As noted above, model borough boundaries were defined and formally adopted in regulation by the Local Boundary Commission.

1970s or the statewide recession of the mid-to-late 1980s. Consider, for example, the following comparison of six important economic measures for the most recent year on record vis-à-vis the previous ten years:

- Alaska's gross state product increased by 12.0%.³⁹
- Employment rose by 19.8%.⁴⁰
- The rate of unemployment dropped by 27.6% (from 8.7% to 6.3%).⁴¹
- Per capita personal income climbed 33.2%.⁴²
- Personal income grew by 48.3%.⁴³
- The value of taxable property increased by 63.1%.⁴⁴

Regarding the second issue, the Commission takes the view that if Alaska's economy had "dramatically declined" model borough boundaries would not have been rendered "obsolete and impractical". Significant reductions in the *strength* of the economy may affect the *economic viability* of prospective borough governments. However, model borough boundaries are dependent upon economic interrelationships and other factors (not strength of the economy).

The Commission cannot apply a different set of borough standards to existing organization boroughs than it applies to unorganized areas of Alaska. Thus, if economic changes during the past decade had rendered model borough boundaries "obsolete and impractical", it would have had the same effect on the formal corporate boundaries of organized boroughs. The same would hold true for REAAs.

Yet, there has been only one borough boundary change in the past ten years. That change resulted in an *expansion* of the boundaries of the Yakutat borough.

³⁹ In 2000, Alaska's gross state product was \$27,747,000,000; the comparable figure in 1990 was \$24,774,000,000. That represents an increase of 12.0%. Source: Bureau of Economic Analysis.

⁴⁰ Annual average employment in 2001 was 301,792; the comparable figure for 1991 was 251,940. Source: Alaska Department of Labor.

⁴¹ The annual average unemployment rate in 1991 was 8.7%; the comparable figure for 2001 was 6.3%. That represents a drop of 2.4 percentage points or a 27.6% drop in the rate of unemployment. Source: Alaska Department of Labor.

⁴² Per capita personal income in 2001 was \$30,936, which was \$7,710 higher than the 1991 figure of \$23,226. Source: Bureau of Economic Analysis.

⁴³ Personal income in 2001 was \$19,641,252,000; the comparable 1991 figure was \$13,242,314,000. Source: Bureau of Economic Analysis.

⁴⁴ The 2002 full and true value of taxable property in Alaska (excluding oil and gas property) was \$41,725,315,500. That figure was 63.1% higher than the comparable 1992 figure of \$25,576,072,700. Source: State Assessor.

Moreover, there have been no changes in the boundaries of REAAs during the past ten years.

As noted in the foregoing, with few exceptions, model borough boundaries closely follow REAA boundaries. In fact, the vast majority of residents of the unorganized borough live in model boroughs that are identical to the REAAs in which they live. The fact that there is no clamor to change the boundaries of REAAs suggests to the Commission that those advocating changes in or abandonment of model borough boundaries are more fundamentally opposed to borough government boundaries as embodied in Alaska's constitution, rather than just model borough boundaries.⁴⁵

Summary description of each model borough.

A summary of the area encompassed by each of the model boroughs is provided below. A map showing model borough boundaries and the boundaries of existing organized boroughs appears at the end of this section.

ALEUTIANS WEST MODEL BOROUGH. The boundaries of the Aleutians West Model Borough (as consolidated with the former Aleutians Military Model Borough) encompass the entire area within the boundaries of the Aleutian Region REAA (including the first class City of Unalaska) The following four communities and settlements are located within the boundaries of the Aleutians West Model Borough:

- Atka
- Attu Station
- Nikolski
- Unalaska
- Adak

Insert map of each model borough in the appropriation place on the following pages showing localities within that model borough

ANNETTE ISLAND MODEL BOROUGH. The boundaries of the Annette Island Model Borough are identical to those of the Annette Island REAA. The following community is located within the boundaries of the Annette Island Model Borough:

⁴⁵ Alaska is probably the only state that sets regional governmental jurisdictional boundaries on the basis of relevant geo-political standards such as natural geography, social, cultural, transportation, economy, and communications factors. Elsewhere, regional governmental boundaries largely reflect such factors as surveyors' section lines, rivers rather than natural drainage basins and like unifying natural geographic features, centuries-old post-colonial county boundaries, etc. Further, unlike Alaska, boundaries of regional governments in other states are typically much harder to revise to reflect changing socio-economic and other conditions.

- 1 ▪ Metlakatla

2
3 **BERING STRAIT MODEL BOROUGH.** The boundaries of the Bering Strait
4 Model Borough are identical to those of the Bering Strait REAA, including the first
5 class City of Nome. The following seventeen communities and settlements are
6 located within the Bering Strait Model Borough:

- | | | |
|----------------------|-----------------------|-----------------------|
| 7 ▪ Port Clarence | 13 ▪ Shaktoolik | 19 ▪ Koyuk |
| 8 ▪ Nome | 14 ▪ Shishmaref | 20 ▪ Teller |
| 9 ▪ Unalakleet | 15 ▪ Elim | 21 ▪ Stebbins |
| 10 ▪ Wales | 16 ▪ White Mountain | 22 ▪ Savoonga |
| 11 ▪ Golovin | 17 ▪ Diomedes | 23 ▪ Brevig Mission |
| 12 ▪ Saint Michael | 18 ▪ Gambell | |

24
25 **CHATHAM MODEL BOROUGH.** The boundaries of the Chatham Model
26 Borough encompass three communities and settlements, including the first class
27 City of Kake:

- 28 ▪ Kake
- 29 ▪ Angoon
- 30 ▪ Cube Cove

31
32 **CITY AND BOROUGH OF JUNEAU.** The model boundaries of the City and
33 Borough of Juneau include the existing City and Borough of Juneau, plus the
34 following settlement in the unorganized borough:

- 35 ▪ Hobart Bay

36
37 **COPPER RIVER MODEL BOROUGH.** The boundaries of the Copper River
38 Model Borough are identical to those of the Copper River REAA. The following
39 eighteen unincorporated communities and settlements are located within the
40 Copper River Model Borough:

- | | | |
|-----------------------|----------------------|--------------------|
| 41 ▪ Paxson | 47 ▪ Gakona | 53 ▪ Kenny Lake |
| 42 ▪ Tazlina | 48 ▪ Glennallen | 54 ▪ Chistochina |
| 43 ▪ Silver Springs | 49 ▪ McCarthy | 55 ▪ Mendeltna |
| 44 ▪ Copperville | 50 ▪ Copper Center | 56 ▪ Chitina |
| 45 ▪ Slana | 51 ▪ Gulkana | 57 ▪ Nelchina |
| 46 ▪ Willow Creek | 52 ▪ Tonsina | 58 ▪ Tolsona |

59
60 **DENALI BOROUGH.** The model boundaries of the Denali Borough include the
61 existing Denali Borough, plus the following two communities and settlements in
62 the unorganized borough, including the home rule City of Nenana:

- 63 ▪ Four Mile Road
- 64 ▪ Nenana

65
66 **DILLINGHAM-NUSHAGAK-TOGIAK MODEL BOROUGH.** The boundaries of
67 the Dillingham-Nushagak-Togiak Model Borough are identical to those of the
68 Southwest Region REAA, including the first class City of Dillingham. The

following eleven communities and settlements are located within the Dillingham-Nushagak-Togiak Model Borough:

- | | | |
|----------------|-------------------|--------------------|
| ▪ Ekuk | 7 ▪ Ekwok | 11 ▪ Manokotak |
| 4 ▪ Dillingham | 8 ▪ Clark's Point | 12 ▪ Portage Creek |
| 5 ▪ Twin Hills | 9 ▪ Aleknagik | 13 ▪ New Stuyahok |
| 6 ▪ Koliganek | 10 ▪ Togiak | |

FAIRBANKS NORTH STAR BOROUGH. The model boundaries of the Fairbanks North Star Borough include the existing Fairbanks North Star Borough, plus the following two settlements in the unorganized borough:

- Central
- Livengood

GLACIER BAY MODEL BOROUGH. The boundaries of the Glacier Bay Model Borough include the following seven communities and settlements, including the first class cities of Pelican and Hoonah:

- | | | |
|-------------------|----------------------|-----------------|
| 24 ▪ Pelican | 27 ▪ Gustavus | 30 ▪ Elfin Cove |
| 25 ▪ Whitestone | 28 ▪ Tenakee Springs | 31 ▪ Game Creek |
| 26 ▪ Logging Camp | 29 ▪ Hoonah | |

IDITAROD MODEL BOROUGH. The boundaries of the Iditarod Model Borough are identical to those of the Iditarod REAA. The following eight communities and settlements are located within the Iditarod Model Borough:

- | | | |
|----------------------|-----------------|---------------|
| 36 ▪ Lake Minchumina | 39 ▪ Nikolai | 42 ▪ Shageluk |
| 37 ▪ McGrath | 40 ▪ Holy Cross | 43 ▪ Grayling |
| 38 ▪ Takotna | 41 ▪ Anvik | |

KETCHIKAN GATEWAY BOROUGH. The model boundaries of the Ketchikan Gateway Borough include the existing Ketchikan Gateway Borough, plus the following two communities and settlements in the unorganized borough:

- Meyers Chuck
- Hyder

KUSPUK MODEL BOROUGH. The boundaries of the Kuspuk Model Borough are identical to those of the Kuspuk REAA. The following eight communities and settlements are located within the Kuspuk Model Borough:

- | | | |
|------------------|--------------------|------------------|
| 54 ▪ Aniak | 57 ▪ Upper Kalskag | 60 ▪ Red Devil |
| 55 ▪ Chuathbaluk | 58 ▪ Lower Kalskag | 61 ▪ Stony River |
| 56 ▪ Sleetmute | 59 ▪ Crooked Creek | |

LOWER KUSKOKWIM MODEL BOROUGH. The boundaries of the Lower Kuskokwim Model Borough are identical to those of the Lower Kuskokwim REAA, plus the Yupiit REAA (a federal transfer REAA serving Akiachak, Akiak, and Tuluksak). The Yupiit REAA is an enclave within the Lower Kuskokwim REAA. The following twenty-five communities and settlements are located within the Lower Kuskokwim Model Borough:

- | | | |
|-----------------|------------------|-------------------|
| 1 ▪ Bethel | 10 ▪ Chefornak | 19 ▪ Kwigillingok |
| 2 ▪ Mekoryuk | 11 ▪ Nunapitchuk | 20 ▪ Napakiak |
| 3 ▪ Kongiganak | 12 ▪ Akiak | 21 ▪ Kasigluk |
| 4 ▪ Newtok | 13 ▪ Akiachak | 22 ▪ Tuluksak |
| 5 ▪ Nightmute | 14 ▪ Napaskiak | 23 ▪ Goodnews Bay |
| 6 ▪ Eek | 15 ▪ Quinhagak | 24 ▪ Kwethluk |
| 7 ▪ Toksook Bay | 16 ▪ Tuntutuliak | 25 ▪ Oscarville |
| 8 ▪ Kipnuk | 17 ▪ Tununak | |
| 9 ▪ Atmautluak | 18 ▪ Platinum | |

26

27 **LOWER YUKON MODEL BOROUGH.** The boundaries of the Lower Yukon
 28 Model Borough are identical to those of the Lower Yukon REAA (including the
 29 first class City of Saint Mary's), plus the Kashunamiut REAA (a federal transfer
 30 REAA serving Chevak). The Kashunamiut REAA is an enclave within the Lower
 31 Yukon REAA. The following thirteen communities and settlements are located
 32 within the Lower Yukon Model Borough:

- | | | |
|-----------------------|----------------------|--------------------|
| 33 ▪ Saint Mary's | 38 ▪ Russian Mission | 43 ▪ Pilot Station |
| 34 ▪ Pitka's Point | 39 ▪ Hooper Bay | 44 ▪ Alakanuk |
| 35 ▪ Mountain Village | 40 ▪ Scammon Bay | 45 ▪ Nunam Iqua |
| 36 ▪ Marshall | 41 ▪ Kotlik | |
| 37 ▪ Emmonak | 42 ▪ Chevak | |

46

47 **LYNN CANAL MODEL BOROUGH.** The boundaries of the Lynn Canal Model
 48 Borough include the existing Haines Borough, plus the following two communities
 49 in the unorganized borough, including the first class City of Skagway:

- 50 ▪ Klukwan
 51 ▪ Skagway

52

53 **PRIBILOF ISLANDS MODEL BOROUGH.** The boundaries of the Pribilof Islands
 54 Model Borough are identical to those of the Pribilof Islands REAA. The following
 55 two communities are located within the Pribilof Islands Model Borough:

- 56 ▪ St. George
 57 ▪ St. Paul

58

59 **PRINCE OF WALES MODEL BOROUGH.** The boundaries of the Prince of
 60 Wales Model Borough include the following thirteen communities and
 61 settlements, including the first class cities of Craig, Klawock, and Hydaburg:

- | | | |
|-------------------|---------------------|----------------------|
| 62 ▪ Edna Bay | 67 ▪ Kasaan | 72 ▪ Point Baker |
| 63 ▪ Whale Pass | 68 ▪ Hollis | 73 ▪ Port Protection |
| 64 ▪ Coffman Cove | 69 ▪ Naukati Bay | 74 ▪ Hydaburg |
| 65 ▪ Thorne Bay | 70 ▪ Port Alexander | |
| 66 ▪ Craig | 71 ▪ Klawock | |

75

76 **PRINCE WILLIAM SOUND MODEL BOROUGH.** The boundaries of the Prince
 77 William Sound Model Borough are identical to those of the Chugach REAA,
 78 including the home rule City of Cordova and the home rule City of Valdez. The

following five communities and settlements are located within the Prince William Sound Model Borough

- Valdez
- Whittier
- Cordova
- Chenega Bay
- Tatitlek

UPPER TANANA BASIN MODEL BOROUGH. The Upper Tanana Basin Model Borough encompasses the Delta Greely REAA and the Alaska Gateway REAA. The following nineteen communities and settlements are within the boundaries of the Upper Tanana Basin Model Borough:

- | | | |
|---------------------|------------------------|-----------------------|
| ▪ Chicken | 20 ▪ Healy Lake | 27 ▪ Northway Village |
| 14 ▪ Alcan Border | 21 ▪ Northway Junction | 28 ▪ Tanacross |
| 15 ▪ Eagle | 22 ▪ Northway | 29 ▪ Dry Creek |
| 16 ▪ Dot Lake | 23 ▪ Big Delta | 30 ▪ Dot Lake Village |
| 17 ▪ Delta Junction | 24 ▪ Eagle Village | 31 ▪ Tetlin |
| 18 ▪ Tok | 25 ▪ Fort Greely | |
| 19 ▪ Deltana | 26 ▪ Mentasta Lake | |

WRANGELL-PETERSBURG MODEL BOROUGH. The Wrangell-Petersburg Model Borough encompasses the following four communities and settlements, including the home rule cities of Petersburg and Wrangell:

- Kupreanof
- Petersburg
- Wrangell
- Thom's Place

YUKON FLATS MODEL BOROUGH. The Yukon Flats Model Borough encompasses the Yukon Flats REAA with the exception of the communities and settlements of Livengood and Central. The Yukon Flats Model Borough includes the following nine communities:

- | | | |
|------------------|---------------------|----------------------|
| 45 ▪ Fort Yukon | 48 ▪ Arctic Village | 51 ▪ Stevens Village |
| 46 ▪ Rampart | 49 ▪ Beaver | 52 ▪ Circle |
| 47 ▪ Chalkyitsik | 50 ▪ Venetie | 53 ▪ Birch Creek |

YUKON KOYUKUK MODEL BOROUGH. The boundaries of the Yukon Koyukuk Model Borough are identical to those of the Yukon Koyukuk REAA (including the first class City of Galena and the first class City of Tanana), except that Nenana and Four Mile Road are excluded. The following seventeen communities and settlements are located within the Yukon Koyukuk Model Borough:

- | | | |
|-----------------|-----------------|----------------|
| 60 ▪ Coldfoot | 65 ▪ Evansville | 70 ▪ Allakaket |
| 61 ▪ Galena | 66 ▪ Alatna | 71 ▪ Hughes |
| 62 ▪ Manley Hot | 67 ▪ Tanana | 72 ▪ Minto |
| 63 ▪ Springs | 68 ▪ Koyukuk | 73 ▪ Ruby |
| 64 ▪ Bettles | 69 ▪ Huslia | 74 ▪ Kaltag |

- 1 ▪ Nulato
- 2 ▪ Wiseman
- 3 ▪ New Allakaket

1

2
1
INSERT MAP SHOWING MODEL BOROUGH
BOUNDARIES AND BOUNDARIES OF
EXISTING ORGANIZED BOROUGH
17

18

19

20

21 ***Subpart (c). Conformance with Regional Educational Attendance Area***
22 ***Boundaries.***

23

24 3 AAC 110.060(c) requires boundaries of new boroughs to conform to the limits
25 of regional educational attendance areas (REAA), unless alternative borders
26 better suit the application of all other borough standards. Specifically, 3 AAC
27 110.060(c) states as follows:

28

29

30

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32

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39

3 AAC 110.060(c). The proposed borough boundaries must conform to existing regional educational attendance area boundaries unless the commission determines, after consultation with the commissioner of education and early development, that a territory of different size is better suited to the public interest in a full balance of the standards for incorporation of a borough.

The requirement that borough boundaries conform to REAA boundaries reflects the strong parallel between the statutory borough standards in AS 29.05.031 (except for the economic capacity standard⁴⁶) and statutory standards for REAAs. A comparison of those standards is provided below.

⁴⁶ Of course, there is no economic capacity standard for REAAs because they are fully funded by the State of Alaska.

1

Borough Standards (AS 29.05.031)	REAA Standards (AS 14.08.031)
“the population of the area is interrelated and integrated as to its social, cultural, and economic activities, and is large and stable enough to support borough government;”	“As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area.”
“the boundaries of the proposed borough or unified municipality conform generally to natural geography and include all areas necessary for full development of municipal services”	“Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins, and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas.”
“land, water, and air transportation facilities allow the communication and exchange necessary for the development of integrated borough government.”	“In the formation of the regional educational attendance areas, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication between communities that comprise the area.”
“the economy of the area includes the human and financial resources capable of providing municipal services; evaluation of an area's economy includes land use, property values, total economic base, total personal income, resource and commercial development, anticipated functions, expenses, and income of the proposed borough or unified municipality;”	[No comparable standard]

2

3

The statutory language concerning the creation of REAAs reads as follows:

4

5

6

7

8

AS 14.08.031. Regional Educational Attendance Areas. (a) The Department of Community and Economic Development in consultation with the Department of Education and Early Development and local communities shall divide the unorganized borough into educational service areas using the boundaries or sub-boundaries of the regional

corporations established under the Alaska Native Claims Settlement Act, unless by referendum a community votes to merge with another community contiguous to it but within the boundaries or sub-boundaries of another regional corporation.

(b) An educational service area established in the unorganized borough under (a) of this section constitutes a regional educational attendance area. As far as practicable, each regional educational attendance area shall contain an integrated socio-economic, linguistically and culturally homogeneous area. In the formation of the regional educational attendance areas, consideration shall be given to the transportation and communication network to facilitate the administration of education and communication between communities that comprise the area. Whenever possible, municipalities, other governmental or regional corporate entities, drainage basins, and other identifiable geographic features shall be used in describing the boundaries of the regional school attendance areas.

(c) Military reservation schools shall be included in a regional educational attendance area. However, operation of military reservation schools by a city or borough school district may be required by the department under AS 14.12.020 (a) and AS 14.14.110. Where the operation of the military reservation schools in a regional educational attendance area by a city or borough school district is required by the department, the military reservation is not considered part of the regional educational attendance area for the purposes of regional school board membership or elections.

(d) U.S. Bureau of Indian Affairs schools shall be included in a regional educational attendance area boundary.

A report issued in September 1977 by the Center for Northern Educational Research, University of Alaska Fairbanks, describes the development of the initial REAA boundaries.

The first major task under SB 35 was to determine the boundaries of the REAAs. Hearings were held throughout the state to solicit views from the affected citizens as to the extent of the REAA in which they would be located. The legislation provided that REAA boundaries would follow regional boundaries set under the Alaska Native Claims Settlement Act.⁴⁷ The statute appears to authorize division of the unorganized borough into as many REAAs as there are regional corporations, along coterminous lines. But use of regional lines was not intended to be exclusive. This is shown by subsection (b) of the same section, prescribing certain characteristics for REAAs. REAAs must contain an integrated and homogenous socioeconomic, linguistic, and cultural area. Consideration is also given to transportation and communication. Geographic features and existing boundaries are to be used in describing boundaries. Of course, first class cities and organized boroughs are to be excluded, as they constitute existing school districts.⁴⁸ Taken together, the two subsections suggest that REAA boundaries are to follow, rather than cross, regional corporation boundaries where they contact them and conform to natural or other predetermined boundaries. This is how the State Department of

⁴⁷ (footnote original) Alaska Statute §14.08.031(a) (1975). The statute also uses the word “sub-boundaries” in reference to the regional corporations. It is not clear what this refers to.

⁴⁸ (footnote original) Alaska Statute §14.08.031(b) (1975).

Community and Regional Affairs, which was charged with administering the act in consultation with the State Department of Education, interpreted it in a series of informational meetings in rural areas around the state in July and August, 1975. Later they began implementing it similarly when hearings were held in numerous bush locations regarding proposed boundaries. The result of the hearings was a division of the state into some 21 REAAs.⁴⁹

Law and Native Education by David H. Getches, Center for Northern Educational Research, University of Alaska Fairbanks, p 29 (1977).

Mr. Getches concluded in his study that the legislation establishing REAAs was flawed because it failed to link REAA boundaries with future boroughs. He noted (emphasis added):

The Local Boundary Commission has authority to alter boundaries of proposed boroughs and cities before it accepts a petition for incorporation.⁵⁰ This power could be used to force coincidence between REAA and municipal boundaries, but only where it is necessary to meet statutory standards for borough incorporation, or in the case of cities, if the proposed boundaries are too restrictive or too expansive for efficient local government. **It is regrettable that the legislature did not mandate the setting of REAA boundaries with future incorporation of municipalities in mind and express that goal as their purpose. Supplemental legislation could convert the REAAs into truly transitional instruments, bringing the REAA arrangement into conformity with the spirit of local government preference in the state constitution.**

Id., p 33.

In a 1977 commentary regarding REAAs, the former Department of Community and Regional Affairs stated as follows regarding the similarities between borough boundary standards and those of REAAs.

... it is interesting to note the specific provisions of Senate Bill 35 which deal with the boundaries Regional Education (sic) Attendance Areas. ... Very similar statutory language exists at AS 29.18.030, which is the statutory provision establishing standards for borough incorporation. The similarity of the standards goes a long ways toward defining appropriate boundaries for potential regional governments. In fact, to some observers, the boundaries of the newly created Regional Education (sic) Attendance Areas (with some exceptions) generally conform to good borough boundaries. This has

⁴⁹ (footnote original) Originally 20 REAAs were created by the Commissioner of Community and Regional Affairs on November 1, 1975, pursuant to authority in Alaska Stat. §14.08.031(a). But after a meeting of residents of REAA 17 and the governor, REAA 21 (including Whittier and Tatitlek) was created on November 24, 1975, dividing REAA 17 along the boundary between the Chugach and Ahna Regional Corporations. Memorandum to REAA file from Michael C. Harper, Deputy Commissioner, Department of Community and Regional Affairs, dated December 3, 1975.

⁵⁰ (footnote original) Alaska Statute §29.18.090 .100 (1972) [since renumbered]

1 been a little alarming to many rural residents, since no small number of them are still
2 concerned that the State is going to soon foist boroughs upon them.

3
4 *Comments Provided to CNER* (Center for Northern Educational Research),
5 Department of Community and Regional Affairs, p 3-4 (October 10, 1977).

6
7 The former Department of Community and Regional Affairs concluded in its
8 comments to the Center for Northern Educational Research as follows.

9
10 In summary, it can be said that formation of the Regional Education (sic)
11 Attendance Areas can be viewed as a positive step towards the formation of
12 regional government in rural Alaska. In particular the newly created service
13 areas have provided a greater amount of local control over a local municipal type
14 service, maintained and strengthened existing regional identifications, and
15 provided boundaries that will be useful for the establishment of boroughs in the
16 future. ...

17
18 Ultimately, the passage of Senate Bill 35, if for no reason other than the fact that
19 it has generated discussion and interest, is going to have had (sic) a significant
20 effect (probably the most significant since the passage of the 1964 mandatory
21 borough act) towards developing regional government in this state.

22
23
24 *Id.*, p. 5-6.

25
26
27 Noted political scientist John E. Bebout, who served as a principal consultant to the
28 Local Government Committee at the Alaska Constitutional Convention, also
29 commented on the suitability of REAA boundaries as borough boundaries:⁵¹

30
31 The development of consensus for organized borough government seems likely
32 in most regions to be a gradual process if it occurs at all. The first step toward it
33 is to break up the single unorganized borough by a single act which establishes
34 boundaries that make sense in terms of the socio-economic standards set by the
35 constitution and reflect the needs of all regions of the state. To continue to
36 create new boroughs, whether organized or unorganized, piecemeal would be
37 likely to leave shapeless areas that could never be assembled in viable borough
38 units unless radical changes were made in the boundaries of already established
39 boroughs, always a politically chancy business. The bill relating to unorganized
40 borough sponsored in 1980 by the Community and Regional Affairs Committee
41 (CS for Senate Bill 348) provides what appears to this writer to be a sound
42 vehicle. Using the boundaries of the regional educational attendance areas
43 subject to adjustment by the commissioner of Community and Regional Affairs,

⁵¹ In addition to his service as a consultant and advisor to the Alaska Constitutional Convention; John E. Bebout was the Assistant Director, National Municipal League; faculty member of Graduate School of Public Administration, NYU; Rutgers University; University of Newark; Director, Citizens League of Cleveland and Cleveland Bureau of Governmental Research, Executive Assistant to Governor of New Jersey; Executive Vice President, New Jersey Constitutional Foundation; Consultant to U.S. Commission on Intergovernmental Relations; Author *Making of New Jersey Constitution, Documents and Readings in New Jersey Government*; and numerous articles on state and local government and civic action.

1 after public hearing, to take account of the established standards, the boundaries
2 adopted by the regional corporations and the 1980 census divisions would give
3 these boroughs boundaries that have the sanction of prior deliberation and
4 experience. The proviso that no unorganized borough shall include territory
5 within more than one native regional corporation under ANCSA underscores the
6 intent to relate the new boroughs to areas already demonstrated to have some
7 community of interests.

8
9 *Problems and Possibilities for Service Delivery and Government in the*
10 *Alaska Unorganized Borough*, Department of Community and Regional
11 Affairs, p. 88 (September 1981).

12
13 In its 1984 study of Alaska's Urban and Rural Governments, the University of
14 Alaska's Institute of Social and Economic Affairs also commented on the
15 similarities between borough standards and those of REAAs:

16
17 The Departments of Education and Community and Regional Affairs designed
18 the regional educational attendance areas. One of their considerations was that
19 districts be of a size that was administratively efficient; this was balanced against
20 a desire to increase local control over schooling. The boundaries of claims act
21 corporations were to be observed, and the new districts were to be appropriate
22 for more general government purposes. In the minds of planners were the
23 standards for borough incorporation: that each area be a natural geographic unit
24 and an economic trading area, made up of individuals with similar cultural
25 backgrounds and life-styles; and that transportation and communication among
26 villages within an area be convenient.

27
28 The 21 rural districts were established as a compromise of the various objectives
29 of designers. In each of the largest Native regions – Calista and Doyon – it was
30 necessary to establish several districts. The designers paid attention to
31 geographic and cultural factors. Thus, in the Calista region, districts were set up
32 for each of the two major rivers – the Kuskokwim and Yukon. In the Doyon
33 region, districts were established on the two road arteries to the south – the
34 Richardson and Parks highways, and villages that can generally be reached only
35 by plane were divided between eastern and western regions. But one district
36 (Iditarod) includes both Calista and Doyon villages. Given the large areas of
37 regional corporations, single districts were set up for only four regions –
38 Northwest Arctic (NANA region), Bering Straits, Copper River (Ahtna region), and
39 Chugach. In general, REAAs cover the unorganized borough, except for about a
40 dozen-and-a-half city school districts.

41
42 *Alaska's Urban and Rural Governments*, T. Morehouse, G. McBeath and L.
43 Leask, p.197 (1984).

44
45 Administrative Order No. 65, issued by Governor Hammond on March 20, 1981,
46 also recognized the equivalence of REAA boundaries to borough boundaries. It
47 directed that:

48
49 All agencies of the executive branch of the state government shall use State
50 Information Districts designated by this order to develop and report information
51 on conditions within their respective jurisdiction and on their programs as may be
52 required by specific requires by the Division of Budget and Management.

1
2 The State Information District boundaries shall coincide with the boundaries of
3 the following as they now exist or may exist in the future:
4

- 5 (1) all unified home rule municipalities,⁵²
6 (2) all organized boroughs; and
7 (3) all rural (sic) educational attendance areas.
8

9 There have been a number of legislative proposals to convert REAAs into
10 unorganized or organized boroughs. The previously-quoted comments of John
11 Bebout referred to a 1980 proposal. A1987 proposal, House Bill 1, proposed to
12 convert regional educational attendance areas into third class boroughs. In
13 1988, the House Research Agency reported as follows:
14

15 House Bill 1 is directly analogous to the Mandatory Borough Act enacted in 1963.
16 The Borough Act of 1961 had allowed for formation of boroughs under local
17 option. After two years, only a single borough - - the tiny Bristol Bay Borough - -
18 had formed, and it was obvious that local initiative was not working. The need for
19 local areawide governments was increasing, however. There was an increasing
20 demand for local services, particularly in the areas outside cities, an increasing
21 demand for local control of essential local functions, a need to equalize tax
22 burdens, and a need to integrate the special service districts - - like the Haines
23 Independent School District - - into constitutional forms of local government.
24 These needs provided the impetus for passage of the Mandatory Borough Act.
25

26
27

28 The generally slow development of boroughs and the concomitant equity
29 problems have been of continuing concern to the legislature. Between 1969 and
30 1979, the legislature considered at least eight bills addressing the organization
31 and financing of regional governments in the unorganized borough. During the
32 period 1979 – 1981, the House and Senate Community and Regional Affairs
33 Committees and the Department of Community and Regional Affairs (DCRA)
34 conducted an extensive study of the “local government” problem, including
35 holding hearings in many villages and contracting with outside experts for reports
36 on various aspects of the problem. Although two regions - - the Yukon Flats and
37 the Yukon Kuskokwim Delta (Association of Village Council Presidents area) - -
38 conducted borough formation studies, neither ever held an incorporation election.
39

40

41 Analysis of education costs and potential revenues of the boroughs that would
42 have been created by HB 1 required some assumptions about how many
43 boroughs would be formed, and which communities would be included in each
44 borough. As prescribed by HB 1, the boundaries of the REAAs in place in 1982
45 would have formed the basis of new borough boundaries. The Kashanamuit and
46 Yupiit REAAs were formed after 1985, thus these REAAs were merged with their
47 surrounding REAA's. All city districts were placed within their surrounding
48 REAAs. Current standards for incorporation of a borough require that there be at
least two separate communities and that there be at least 1,000 residents. To be

⁵² A unified home rule municipality is a particular type of borough, it must meet all standards for borough government. See 3 AAC 110.990(1); see also *Background on Boroughs in Alaska*, Alaska Department of Community and Economic Development, page 4, footnote 1 (November 2000).

consistent with these standards, the Adak, Pribilof and Annette Island REAAs, which alone did not meet those standards, were incorporated into adjoining REAAs.

A New Mandatory Borough Act: Local Education Costs and Potential Revenues of Newly Created Boroughs (House Research Agency Report 88-A) p 14-16 (February 1988)

Subpart (d). Presumption Against Enclaves.

3 AAC 110.060(d) establishes a presumption that the boundaries of a borough will not include jurisdictional gaps or enclaves (i.e., “donut holes” not within the jurisdiction of a borough). Specifically, 3 AAC 110.060(d) provides as follows:

3 AAC 110.060(d). Absent a specific and persuasive showing to the contrary, the commission will presume that territory proposed for incorporation that is non-contiguous or that contains enclaves does not include all land and water necessary to allow for the full development of essential borough services on an efficient, cost-effective level.

The presumption against enclaves rests on the policy view that jurisdictional voids within municipal boundaries restrict maximum efficiency and effectiveness in the delivery of local services. Of the 161 municipal governments in Alaska, only two have enclaves. The Commission approved an annexation (subject to review by the 2003 Legislature) to one of those two that would result in the elimination of the enclaves in the annexing municipality. If the Commission’s recommendation is approved by the 2003 Legislature, only one municipal government in Alaska (Haines Borough) will have boundaries that enclose an enclave.

Part 6. 3 AAC 110.065. Best Interests of State.

The last standard in the Alaska Administrative Code dealing specifically with borough incorporation relates to the broad public interest. As noted previously, AS 29.05.100 allows the Commission to approve a borough incorporation proposal only if the proposal “is in the best interests of the state.”

The Commission adopted 3 AAC 110.065 to guide it in determining whether a borough incorporation proposal serves the best interests of the state. The standard provides as follows:

3 AAC 110.065. Best Interests of State. In determining whether incorporation of a borough is in the best interests of the state under AS 29.05.100 (a), the commission may consider relevant factors, including whether incorporation

- (1) promotes maximum local self-government;
- (2) promotes a minimum number of local government units;

(3) will relieve the state government of the responsibility of providing local services; and
(4) is reasonably likely to expose the state government to unusual and substantial risks as the prospective successor to the borough in the event of the borough's dissolution.

The first three factors set out in 3 AAC 110.065 reflect the fundamental principles of Article X, Section 1 of Alaska's constitution. Those principles promote the assumption of self-determination through the creation of borough governments. Moreover, they advance the notion that regions should undertake the responsibility for municipal services that are funded and managed at the regional and local level. Accordingly, the Alaska Supreme Court stressed that Article X, Section 1 "encourages" the creation of boroughs. See: *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 101 (Alaska 1974).

The fourth factor set out in 3 AAC 110.065 stresses that it is in the public interest to create boroughs only where they are financially viable. If a region lacks the financial capacity to operate a borough, it would be counter to the public interest to establish a borough in the region.

The Legislature has imposed similar "best interest restrictions" on all actions that come before the Local Boundary Commission (i.e. annexations, detachments, mergers, consolidations, dissolutions, city reclassifications, and city incorporations). The Commission adopted 3 AAC 110.980 for use in making determinations of the best interests of the state for all actions that come before the Commission. 3 AAC 110.980 states:

3 AAC 110.980. DETERMINATION OF BEST INTERESTS OF THE STATE

If a provision of AS 29 or this chapter requires the commission to determine whether a proposed municipal boundary change or other commission action is in the best interests of the state, the commission will make that determination on a case-by-case basis, in accordance with applicable provisions of the Constitution of the State of Alaska, AS 29.04, AS 29.05, AS 29.06, and this chapter, and based on a review of

- (1) the broad policy benefit to the public statewide; and
- (2) whether the municipal government boundaries that are developed serve
 - (A) the balanced interests of citizens in the area proposed for change;
 - (B) affected local governments; and
 - (C) other public interests that the commission considers relevant.

Part 7. 3 AAC 110.900-910. Transition & Non-Discrimination.

In addition to the foregoing specific standards relating to borough incorporation, the Commission has adopted two other regulations establishing requirements that are applicable to all actions that come before the Commission. The first is a general requirement (3 AAC 110.900) intended to ensure an efficient and successful transition regarding the establishment or alteration of municipal governments approved by the Commission. The second (3 AAC 110.910) is

intended to ensure that no action approved by the Commission will bring about the denial of civil or political rights because of race, color, creed, sex, or national origin.

Those two general provisions are addressed below.

Transition.

The Commission's regulations concerning transition provide as follows:

3 AAC 110.900. TRANSITION

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential city or essential borough services into the territory proposed for change in the shortest practicable time after the effective date of the proposed change. A petition for city reclassification under AS 29.04, or municipal detachment or dissolution under AS 29.06, must include a practical plan demonstrating the transition or termination of municipal services in the shortest practicable time after city reclassification, detachment, or dissolution.

(b) Each petition must include a practical plan for the assumption of all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, and other appropriate entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city and unorganized borough service area, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the effective date of the proposed change.

(c) Each petition must include a practical plan for the transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located in the territory proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area wholly or partially included in the area proposed for the change, and must be designed to effect an orderly, efficient, and economical transfer within the shortest practicable time, not to exceed two years after the date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

(d) Before approving a proposed change, the commission may require that all boroughs, cities, unorganized borough service areas, or other entities wholly or partially included in the area of the proposed change execute an agreement prescribed or approved by the commission for the assumption of powers, duties, rights, and functions, and for the transfer and integration of assets and liabilities.

In the case of borough incorporation, the intent of 3 AAC 110.900 is to require forethought with respect to the manner in which services will be extended within a newly incorporated borough. A transition plan prepared by petitioners must also demonstrate good faith to extend those services.

3 AAC 110.900(b) requires a practical plan for the assumption of relevant powers, duties, rights, and functions presently being exercised by other service providers. That would include, in particular, education and planning services carried out by REAAs, home rule cities, and first class cities in the region. It may also involve assessment and collection of municipal taxes and discretionary borough powers. 3 AAC 110.900(c) requires a practical plan for the transfer and integration of relevant assets and liabilities.

A newly incorporated borough is permitted a two-year transition petition to assume responsibility for local services. AS 29.05.130 – 140 also relate to transitional aspects of a newly formed borough. Those provisions state as follows:

Sec. 29.05.130. Integration of special districts and service areas. (a)

A service area in a newly incorporated municipality shall be integrated into the municipality within two years after the date of incorporation. On integration the municipality succeeds to all the rights, powers, duties, assets, and liabilities of the service area. On integration all property in the service area subject to taxation to pay the principal and interest on bonds at the time of integration remains subject to taxation for that purpose.

(b) After integration, the municipality may exercise in a former service area all of the rights and powers exercised by the service area at the time of integration, and, as successor to the service area, may levy and collect special charges, taxes, or assessments to amortize bonded indebtedness incurred by the service area or by a municipality in which the service area was formerly located.

Sec. 29.05.140. Transition. (a) The powers and duties exercised by cities and service areas that are succeeded to by a newly incorporated municipality continue to be exercised by the cities and service areas until the new municipality assumes the powers and functions, which may not exceed two years after the date of incorporation. Ordinances, rules, resolutions, procedures, and orders in effect before the transfer remain in effect until superseded by the action of the new municipality.

(b) Before the assumption, the new municipality shall give written notice of its assumption of the rights, powers, duties, assets, and liabilities under this section and AS 29.05.130 to the city or service area concerned. Municipal officials shall consult with the officials of the city or service area concerned and arrange an orderly transfer.

(c) After the incorporation of a new municipality, a service area in it may not assume new bonded indebtedness, make a contract, or transfer an asset without the consent of the governing body.

(d) Upon incorporation, the home rule charter of a unified municipality operates to dissolve all municipalities in the area unified in accordance with the charter.

(e) This section applies to home rule and general law municipalities.

1 ***Non-Discrimination.***

2
3 The Local Boundary Commission has adopted regulations (3 AAC 110.910) that
4 prohibit the establishment or alteration of a local government if the effect of such
5 would deny any person the enjoyment of any civil or political right, including
6 voting rights, *because of race, color, creed, sex, or national origin*. Specifically, 3
7 AAC 110.910 provides as follows:

8
9 3 AAC 110.910. STATEMENT OF NON-DISCRIMINATION

10 A petition will not be approved by the commission if the effect of
11 the proposed change denies any person the enjoyment of any civil or
12 political right, including voting rights, because of race, color, creed, sex,
13 or national origin.

14
15 In addition to 3 AAC 110.910, the federal Voting Rights Act of 1965, codified as
16 amended at 42 U.S.C. Section 1973, establishes standards relating to the effects
17 that incorporation would have upon civil and political rights of minorities. The
18 Voting Rights Act prohibits political subdivisions from imposing or applying voting
19 qualifications, voting prerequisites, standards, practices, or procedures to deny or
20 abridge the right to vote on account of race or color or because a person is a
21 member of a language minority group.⁵³

22
23 The effects of any borough incorporation in Alaska in terms of voting rights are
24 subject to review by the U.S. Justice Department.

25
26
27
⁵³ Specifically, 42 U.S.C. Section 1973 provides as follows:

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.